

insights

What you need to know about Australian sweepstakes and contest regulations

One of my favorite aspects of my practice is how it has connected me to fantastic attorneys and businesses around the globe. More and more, sweepstakes and contests are global in nature. Companies around the world reach into other countries for potential audiences. And social media has “flattened” the world by enabling customers from all different geographies to participate in sweepstakes and contests.

That was the case with a recent sweepstakes I worked on with **Connor James**. Connor is an Australian lawyer (or “solicitor,” as we attorneys are called in many parts of the world) with the [Permitz Group](#). We worked together to prepare a set of official rules for a sweepstakes sponsored by one of his clients that will be implemented in the U.S. It was an interesting promotion that involved a trip for two from Australia to New York City for a concert to benefit a well-deserving charity.

I then asked Connor if he would write a guest post that describes some of the differences between U.S. and Australian sweepstakes and contest regulations, with the caveat that we cannot provide legal advice to our readers. As with [our previous post on Canadian law](#), some language differences do crop up: Australians refer to sweepstakes as “competitions.”

Australian sweepstakes: some points of difference

Much like in the U.S., Australia has state-based laws which regulate sweepstakes (locally known as “competitions”). This article provides a general summary of some of the Australian requirements and points of difference.

The information in this article is intended to be general in nature and is not, nor should it be relied upon as, legal advice. There are a range of Australian obligations to consider when setting up competitions in Australia, some of which are not covered below.

Skill and chance

One of the most important distinctions in Australia, as elsewhere in the world, is between a skill-based competition and a chance-based competition. A competition that involves an element of chance in determining the winners will be considered to be based on chance. If winners are purely determined on the basis of the skill in their submission, and by qualified judges, the competition would be considered to be skill-based. If the scope of a potential entrant’s answer is limited and would result in more than one person getting the correct answer, the competition is likely to be based on chance.

Competition permits

The above distinction is important in determining if a competition permit or license is required. National chance-based competitions require competition permits in at least two Australian States. Chance-based competitions must also comply with various requirements, including ensuring that winners are notified in writing within two days of the draw, that an unclaimed prize draw is conducted after three months (or earlier if the prize is an event) if the prize remains unclaimed, and that records are kept of entries and winners. Prizes must also be appropriate to the age group of entrants. For example, no alcohol can be awarded for entrants under the age of 18 (the legal drinking age in Australia).

Purchase to enter is okay

There is no restriction on requiring an entrant to purchase a product or service to enter either a skill- or chance-based competition in Australia, so long as the purchase price is the recommended retail price (i.e. prices aren’t bumped up). Chance competitions must still be “free to enter” after the purchase has been made. However, standard postage costs or premium text messaging charges of up to 55 cents may be incurred by an entrant.

Australian competitions can have all three of the following elements: a purchase required to enter, a draw to determine the winners, and a prize.

Privacy, spam and other consumer protections

There are a range of privacy, spam and consumer protections that must be considered when setting up and running a competition in Australia. Companies must ensure that they comply with these requirements. For example entrants must understand how, why and for what purpose their personal information is collected. [Australian Consumer Law](#) is the source of many consumer protections, including some statutory guarantees that cannot be excluded.

There are significant potential penalties for a company that fails to comply or fails to obtain competition permits. For example, a breach of the Australian Consumer Law may result in penalties of more than \$1 million for each breach.

About us

The Permutz Group helps clients with all aspects of Australian competitions, including drafting terms and conditions, obtaining competition permits, conducting draws and notifying winners. Its members work with many leading Australian companies that rely on them to manage their competitions and help promote their brand and products.

This post was written by retired Thompson Coburn partner Dale Joerling. If you have any questions about the topics discussed in this post, please contact Thompson Coburn partner [Hap Burke](#).

authorsTest