

# Sweepstakes' sponsors must know the rules



By Bart  
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Last month, we focused on the importance of sweepstakes rules to a successful promotion. Despite the small print and the legalese, the rules form a binding contract between the sponsor of the sweepstakes and the entrant. Drafted properly, the rules will give the sponsor the flexibility to handle issues that may come up in the life of the promotion. But how should the rules be

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drafted, and what should they include? While I cannot cover everything in this column, and rules should be reviewed by a professional, here are some things to consider. In order for appropriate rules to be draft-

ed, the structure of the sweepstakes should be finalized or close to finalized. Last-minute changes to the structure of a promotion can really make a difference. In order to understand the promotion, the person preparing the rules (whether an attorney or not) needs to have a grasp of at least the following pieces of information.

### Eligibility rules

The rules must define who is and isn't eligible. Sometimes sponsors impose age and residence requirements. In addition, a sponsor should exclude people who work for the sponsor and other entities involved in administering the sweepstakes as well as the immediate family members and members of the household of the excluded individuals. Depending on the particular contest, a sponsor may also narrow a class to eliminate people in certain professions, such as professional chefs in a recipe contest, or to include only certain types of individuals, for example, individuals enrolled as full-time students in degree programs at universities or colleges. Purchases or payments cannot be required to enter unless the promotion is truly a skill contest.

### Entry requirements

In the typical sweepstakes, an individual drops an entry in the box or fills out an entry online or off-line. It is more typical today for individuals to be entered in a sweepstakes if they make a purchase. If this occurs, and a random draw sweepstakes (rather than a skill contest) is intended, there must also be a free method of entry, and this method must not be incredibly burdensome for the entrants. The New York Attorney General's office has recently investigated and entered into settlement agreements with companies that have imposed burdens on free entrants far beyond the burden on someone who makes a purchase to enter.

The rules should also specify the duration of the contest and the deadline for entry. Contests with different methods of entering may have different deadline conditions. For example, if a sweepstakes has an online and off-line method of entry, the cutoff date for entering online should be the same date on which off-line entries need to be mailed. However, a sponsor should give time for the

off-line entries to be received by mail before picking the winner.

### Winner selection

Typically, winners should be chosen at random by an independent judging organization (read: not the sponsor) whose decisions are final. Even if you use a computer to determine the winner, it is important to have someone who is not an employee of the sponsor interact with the computer to "choose" the winner. If a skill contest is being run, the judges should have knowledge or experience relating to the skill involved.

### Prizes

Prizes and their estimated retail value must be stated in the rules. The rules should state any conditions involved with respect to prizes. Specific prizes (travel, automobiles) need to be identified (and exclusions stated) with specificity to avoid any confusion regarding the prize that the winner is entitled to receive. Also, the rules should specify that only the sponsor may substitute an alternative or cash prize, unless the sponsor wants to give the winner an option to choose cash or some other prize. The rules should also notify the entrant that the winner is responsible for any taxes on the prize.

### Other winner responsibilities

Since the purpose of any contest is to promote products or services, it is likely that you will want to engage in some promotion relating to the contest winners generally or the grand prize winner (and potentially guests or other people utilizing the grand prize). It is therefore important that the rules advise entrants that they will need to execute a publicity release if they win so that the sponsor may use the winners' (and guests, if applicable) names, images or entry for the purpose of promoting the contest and potentially the sponsor's products or services. The sponsor will usually want to get a waiver of any liability resulting from the use of the prize.

### Privacy issues

If entrant names, addresses, e-mails or other information are going to be harvested and used for marketing purposes by the sponsor, or provided to co-sponsors, this information must be disclosed in the rules. If the sweepstakes is only promoted online, a link to the privacy policy may be sufficient.

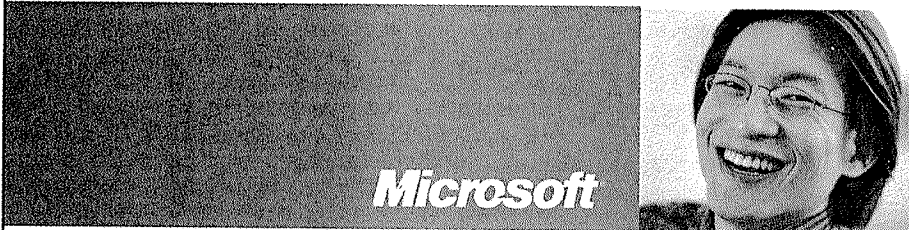
### Other provisions

As mentioned last month, there are a variety of other provisions, such as the arbitration provision, which could save the day in a dispute. Among these types of provisions are disclaimers of liability for lost, misdirected, delayed mail or failure of electronic communications or misprints in the advertising materials or contest rules; the ability to void or suspend the sweepstakes in the event of difficulties in the sweepstakes; warnings regarding committing fraud with respect to the sweepstakes, odds of winning, how to obtain copies of the rules or winners' lists; and don't ever forget the famous "No purchase necessary" and "Void where prohibited by law" statements.

If you have a full understanding of the structure of your promotion and your draft rules include all of these elements, they should be in good shape when you submit them for legal review. ■

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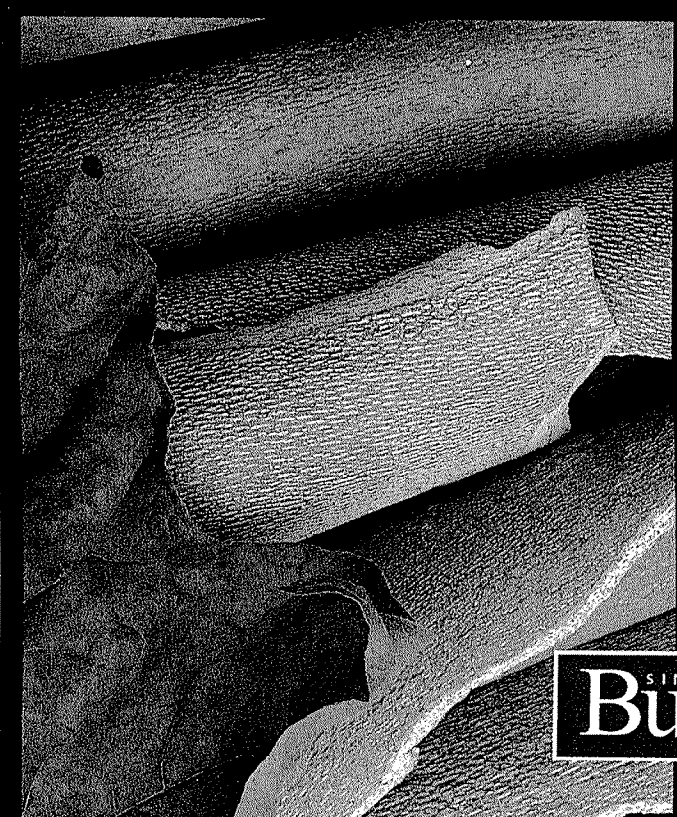
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