

The Dark Side of Online Promotions

by Bill Carmody, Chief Marketing Officer, Seismicom

Since you're reading *iMarketing News*, you're probably well aware of the power of online promotions. Whether your objective is to drive traffic to your web site, increase membership, collect data, or drive online sales, many a savvy marketer has discovered that successful online promotions are just what the CEO ordered.

There is, however, a flip side to these promotions that most would rather sweep under the carpet. I'm talking about the legal requirements that must be dealt with in order to avoid the fines, courtrooms, and bad PR that will inevitably find their way into your company at the most inconvenient times. The key to avoiding these potential problems is to simply understand and comply with what is required of your company when conducting online promotions. By knowing the requirements, you can easily identify when potential problems could arise.

Offline Rules Still Apply

While the federal and state legislators are busy dealing with Internet privacy and information laws, it is important to note that traditional sweepstakes and contest regulations still apply. While there will always be new rules associated with new media, the old rules will be applied until the new laws are in place. The good news is that these traditional laws translate surprisingly well to online promotions. While there are specific time considerations for things like state registrations (i.e. 30 days prior to the start of a promotion for New York and 7 days for Florida for sweepstakes), these rules are not nearly as cumbersome as they might at first appear.

A Sweepstakes Is Not A Contest

Both sweepstakes and contests have separate legal definitions and the terms should not be used interchangeably. By definition, an illegal lottery has all three elements of prize, chance & consideration. If your promotion has all three elements, then you are in violation of state and federal lottery laws.

$$\text{Prize} + \text{Consideration} + \text{Chance} = \textit{Illegal Lottery}$$

To avoid this violation, you need only remove one of the three elements. For sweepstakes, you remove the element of consideration (i.e. "No Purchase Necessary"). For a contest, you remove the element of chance, thus making the promotion skill-based in which every entry is judged on some pre-defined set of criteria.

Official Rules Are Your Contract With Your Customers

After you get through all the specifics of how you want to run your online sweepstakes or contest, you will then need to draft a set of official rules. These rules serve as your company's contract with your customers. Among other things, the rules declare who is eligible to participate, how to enter, when the promotion begins and ends, where the promotion is available geographically, a description of the prizes (including quantities, approximate retail value and odds of winning where applicable), and the necessary disclaimers of liabilities.

Believe it or not, the trouble with the official rules usually happens *after* they have been published. By published, I mean released on a web site or printed in some form of media accessible to the public. The logic goes like this: I have a web site, therefore I can change what's on my web site whenever I feel like it. Unfortunately, this does *not* apply to the official rules.

Once the official rules have been published to consumers, they can not be changed. Changing the official rules after the launch of the promotion would be like altering a contract with a vendor after you both have signed it. For potential legal problems, all that is needed is for a single consumer to have printed out your official rules page before and after the change. This demonstrates to a regulator that your company was not bound by its own official rules and therefore will have a much more difficult time defending misrepresentation and other claims from consumers.

Beware Of The Word "Free"

The words, "Win", "Free", and "New" are said to be the three most powerful words in the direct marketing industry, and as such are subject to much legal scrutiny. The word "Free", for example, may subject your online promotion to special regulations such as disclosure of terms (i.e. disclosures as to what you have to do to get the free item and specified type size for those disclosures), and limitations on frequency and duration (i.e. "While supplies last").

World Wide Web Doesn't Mean World Wide Promotions

Another common mistake with online promotions is the theory that just because anyone in the world with Internet access can get to your web site, you should include them in your online promotion. While the Internet may not have geographic boundaries, this is certainly not the case when it comes to sweepstakes and contest laws. European countries have very specific legislation that must be adhered to and online promotions are not exempt from these requirements. Online promotions can be launched internationally, but legal council from each individual country must be consulted when you wish to run a promotion there. Just as individual US states have registration and bonding requirements, so do many countries outside of the United States.

Knowledge Is The Answer

To avoid making serious promotional marketing blunders, don't be afraid to ask the tough questions. The three best ways to protect yourself are to: (1) know the laws, (2) work within them, and (3) expect the unexpected. It's better to ask yourself, "What could possibly go wrong?" *before* the promotion is launched than when it is too late to do anything about it.

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