



## YEARLY ROUND UP: HOT TOPICS IN SWEEPSTAKES AND CONTESTS LAW

Another year is almost over and we continue to hear the refrain of the regulators trying to keep pace with the marketers. Text messaging, privacy and social networking continue to be hot topics in the 21<sup>st</sup> century, but the biggest surprise may have been Puerto Rico regulators finally entering the 20<sup>th</sup> century!

### **Puerto Rico Changes Its Sweepstakes Regulations.**

Effective November 27, 2009, it will be significantly easier to open sweepstakes to residents of Puerto Rico. Puerto Rico recently passed legislation that eliminated many of the practical barriers that caused sponsors to void Puerto Rico. For example: (i) abbreviated rules in ads are now permitted, (ii) certification of rules, drawing and game pieces is gone, (iii) full rules can be published on the Internet, (iv) prizes do not have to be awarded within three months of the drawing, and (v) payment of standard text messaging rates or other fees to unrelated third parties is o.k. We should now be seeing a lot less rules with a “void in Puerto Rico” carveout. The new regulation can be found at [daco.gobierno.pr](http://daco.gobierno.pr).

**Maine Privacy Law.** This year the state of Maine passed a privacy law much broader than federal Children’s Online Privacy Protection Act (“COPPA”), mandating verifiable parental consent for collecting personally identifiable information from anyone under 18 if such information will be used for marketing purposes. (10 M.R.S.A. § 1055.) Because of the potential breadth of the law, many marketers thought it safe to simply void Maine residents under 18. But as a result of a court ruling in September, 2009, the state Attorney General has committed not to enforce the law and has represented that the legislature will be reconsidering the law once it reconvenes in January.

**Text Message Sweeps.** In April, 2009, the U.S. Senate began considering a bill called the “m-SPAM Act of 2009,” which seeks to prohibit unsolicited SMS messages along the lines of the federal CAN-SPAM Act, which applies to emails. The bill is still in committee, but this legislative activity serves to demonstrate that legislators and regulators are becoming increasingly concerned with the use of text messaging in marketing. In another interesting development, the Mobile Marketing Association (“MMA”) recommended in its July 2009 Best Consumer Practices Guidelines that the phrase “standard rates may apply” be replaced with “message and data rates may apply” to more accurately reflect the technology. These guidelines can be found at [mmaglobal.com/bestpractices.pdf](http://mmaglobal.com/bestpractices.pdf). In addition, the FTC is

considering whether to apply COPPA-like rules to mobile marketing aimed at collecting information from children. Particularly during this period of uncertainty in the regulation of mobile marketing, it would be advisable to follow best practices as incorporated in the MMA guidelines.

**Sweepstakes and Contests on Social Networking Sites.** One of the newer rages is to have your sweepstakes on Twitter, You Tube, Facebook or other social networking sites. But don’t forget these sites may have their own rules on how the game must be administered. For instance, Facebook requires prior written approval to administer a promotion on its site, and Twitter’s 140-character max leaves little room for abbreviated rules, which may need to be sent in a separate email. In addition, you may need permission to use the site’s name and marks in your own ads. Many of these sites post their internal rules online, such as at: [facebook.com/promotions\\_guidelines.php](http://facebook.com/promotions_guidelines.php) and [youtube.com/pdf/youtube\\_contests.pdf](http://youtube.com/pdf/youtube_contests.pdf).

**FTC Revises Endorsement and Testimonial Rules.** On October 5, 2009, the FTC issued revisions to its Endorsement and Testimonial Guides effective December 1, 2009. Significant changes include: (i) advertisers cannot continue to say “results not typical” when touting results achieved through the use of a product or service: consumer testimonials now must be representative of what other consumers can generally expect to achieve, (ii) all material connections between the endorser and the advertiser must be disclosed; this includes paid endorsers as well as consumers who are given free products in order to generate word of mouth to spur sales (which is particularly common in consumer-generated media), and (iii) celebrities can now be liable for false advertising when they fail to disclose their relationship with the advertiser in ads and even on talk shows or in social media platforms.

These latest developments re-confirm that the world of promotion law is ever changing. To keep up or for other assistance, please feel free to contact Rob Laplaca at (203) 222-3110 or [rlaplaca@levettrockwood.com](mailto:rlaplaca@levettrockwood.com)

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