



ADVERTISING AND MARKETING QUICK FACTS

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More than 60 attorneys focused on advertising and marketing issues in New York, Los Angeles and Washington, DC

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Chambers USA

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Best Lawyers

SWEEPSTAKES AND PROMOTIONS PRACTICE

Promotions such as sweepstakes, contests and loyalty programs are an essential aspect of most companies' marketing strategies. As companies increasingly utilize digital media for their promotions, providing effective legal assistance has become complex and challenging. Venable has extensive experience with a wide variety of promotion and gaming "concepts" and novel regulatory issues in every type of media, and has acted as "go to" counsel for companies in virtually every industry, from food to consumer products and services, hospitality to entertainment, and retail to technology.

Venable's promotions law team regularly helps clients understand how to comply with legal and regulatory standards applicable to sweepstakes, contests, gaming and other promotions issues. We assist clients in navigating the opportunities offered by new and constantly evolving forms of social media, mobile marketing, user-generated content, and other technological formats. Venable also regularly represents companies acting as commercial co-venturers in charitable promotions, advising them on how to comply with state and carrier requirements for participation and assisting them in drafting and negotiating the contracts with the charity, developing required disclosures and complying with registration and other regulatory requirements.

Venable provides comprehensive counsel from drafting and negotiating agreements, creating user terms and promotion rules, to advising on campaign strategy, promotion structure, marketing collateral and compliance with both state and federal laws. Additionally, we assist clients in staying up to date on the latest developments in the law and technology. As part of our services, we have created a detailed Sweepstakes and Contests Manual for use by our clients. This manual includes user-friendly instructions and form disclosures and rules to assist clients in creating multiple types of promotions online and in traditional media.

SWEEPSTAKES AND CONTEST CAPABILITIES

Different companies have different needs as to the services they will require when launching a prize promotion. To accommodate this, and to accommodate your legal/marketing budget, Venable works with you to review a full menu of promotion-related services. While some of these services (in particular, the evaluation of the promotion structure for compliance with state and federal anti-gambling laws) are generally performed by a Venable attorney, others may be performed, at least in part, by the client.

Structuring the Promotion

Every promotion begins with an idea. Our clients typically come to us with a basic concept for a promotion and ask whether it will be legal. Venable's attorneys can call upon their up-to-the-minute legal knowledge and resources, including our recently updated 50-state survey and extensive experience with federal and state investigations and enforcement actions, to determine whether a specific promotion is a legal contest or an illegal lottery. Where relevant, we also review promotions for compliance with specialized rules such as the Facebook promotions rules. If we do identify a problem, we will suggest alternatives – often, the "fix" is a simple matter of creativity and judgment.

CLIENT FOCUS

Advertising agencies
Consumer products companies
Direct-response advertisers
Entertainment companies
Telecommunications companies

MEDIA TYPES

Short-form and program-length
TV commercials
Internet
Radio
Print
Direct mail

PRACTICE FOCUS

Electronic retailing
Product development
Labeling and packaging
Advertising content
Copyrights, patents and trademarks
Privacy protection
Compliance counseling
Public policy and legislation
Deceptive trade practices

REGULATORY KNOW-HOW

Federal Trade Commission
Federal Communications Commission
Food and Drug Administration
United States Postal Service, Postal Rate Commission
Do-Not-Call regulations
State consumer agencies
Electronic Retailing Self-regulatory Program
Better Business Bureau, National Advertising Division
Network broadcast standards

LITIGATION FOCUS

False advertising
Unsubstantiated claims
Intellectual property rights

Drafting Rules

The next step in designing and executing a promotion is creating the “Official Rules” that will provide both the framework for the contest and the “contract” between the consumer and the promoter. To educate and assist its clients, Venable has created a Sweepstakes and Promotions Manual, an extensive guide to creating legally compliant prize promotions, which includes legal guidelines and form rules for multiple prize promotion formats, such as random draw and user-generated content promotions on Facebook, Twitter, Pinterest and other social media platforms. We can work from these forms, or your own preferred forms, to create your ideal sweepstakes and contest formats. Whatever the preferred modus operandi, Venable is always able to work with the client in a highly efficient manner using its extensive form file and its long experience in the area.

Registration / Bonding

If the client prefers, Venable can file the registration and bond the sweepstakes in any states where such registrations are required. Venable is in regular contact with the individuals that accept filings in both New York and Florida, and is very familiar with those states’ requirements, as well as those of Rhode Island and Arizona. Venable works with an online Sweepstakes bonding company to provide sweepstakes bonds and same-day filing in the relevant jurisdictions.

Advertising Review

In addition to reviewing contest structure and rules, Venable will review advertising copy for print, radio, television, the Internet, or any medium. Our expertise in advertising and direct marketing law facilitates our work with clients using all campaign media.

Promotion Fulfillment and Follow Up

Once the contest has been launched, it must run smoothly. Venable has affidavits of eligibility and releases for use with winners in its form files that can easily be tailored to a specific client. Many clients wish to assume the responsibilities for executing the remainder of the promotion (drawing, filing winners’ lists, etc.), but Venable can also help to the extent the client does not wish to do so.

Other Regulatory Issues, Privacy

Even simple contests can sometimes implicate surprisingly complex regulatory issues. In particular, Internet- and social media-based contests that involve the collection of marketing information may implicate privacy concerns. Venable can spot these issues and ensure that they do not become future enforcement problems.

International

Increasingly, promotions are not just national but multinational—the internet is global, and so marketers seek a reach that is the same. The sweepstakes and contest laws, however, vary significantly from country to country. Some countries impose requirements that the rules be translated into the local language and registered with a notary. Some countries prohibit pure games of chance altogether, and certain alterations must be made to the way the game is played in order for the promotion to be legal. Certain countries place limitations on the value of the prizes that may be given away. To ensure 100% legal compliance for the promotion in each of the countries where potential entrants live, the legal structure and terms and conditions of such a promotion would need to be reviewed by local counsel in each country where the entrants reside.

EXPERIENCE

Over the years, Venable has counseled companies seeking to run contest promotions in virtually every industry; through this long and rich experience, we have encountered a wide variety of unique promotion “concepts” and unusual regulatory issues. Venable has also partnered with several large consumer products and services organizations to provide advice on an ongoing basis, working directly with their marketing and advertising departments to prepare and launch new contest promotions.

Direct-to-consumer marketing
Business torts
Employment
Lanham Act claims
Defense in investigations,
challenges and litigation brought
by regulatory agencies

ASSOCIATION LEADERSHIP

Venable attorneys have long-standing relationships with many industry associations, such as

Electronic Retailing Association

Direct Marketing Association

Interactive Advertising Bureau

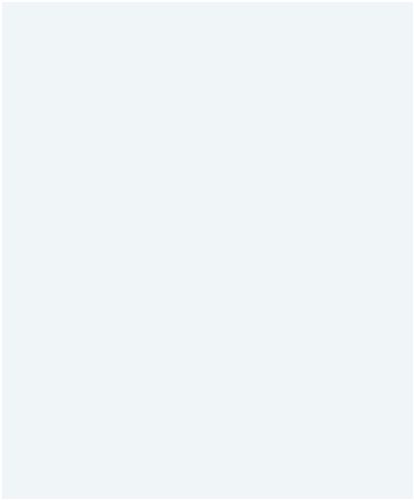
Association of Postal Commerce

Brand Activation Association

Direct Response Marketing
Alliance

Representative matters and clients include:

- Assisting Research in Motion, Ltd, dba BlackBerry in an international, cross-media, multi-promotion effort as it launched a “bet-the-company” product. Venable advised the client in the concept review, assisted in negotiating agency contracts, joint promotion and promotion services agreements, created terms and conditions, and supervised clearance and registration globally of multiple sweepstakes, contests and other promotions. In conjunction with this effort, Venable seconded two attorneys, at the client’s request, to act part-time as in-house counsel for approximately six months.
- Assisting MicroStrategy, Inc., a multinational software company, in developing and launching an international prize promotion in conjunction with one of the world’s most prominent soccer franchises that ran in the United States, Canada, the United Kingdom, France, Germany, Italy, Spain, and Japan. Developed the structure of the promotion and advised the client on the creation of marketing materials for the campaign for compliance with U.S. law and supervised the legal clearance of the promotion in the listed countries utilizing our network of international counsel. The matter was an outgrowth of the firm’s work for the client in developing its new social media application that interfaces with a user’s Facebook account to create a Craig’s List-like platform that is limited to users’ social graph (i.e., their friends and friends-of-friends on that particular social media platform).
- Performing a comprehensive assessment and update of Capital One’s regulatory database to ensure that all future promotions were compliant with federal and state regulations such as the federal CARD Act, lottery and prize promotions laws, state gift card laws, and state UDAAP (unfair, deceptive, abusive advertising practices) statutes.
- Advising a leading children’s television cable network on the risk mitigation for a national Halloween costume contest that faced significant children’s privacy and intellectual property rights issues after a service provider hired to create the rules for the contest made significant errors in the structuring of the contest which exposed the client to significant legal risk.
- Reaching an inclusive multi-state settlement to charges in all 50 states that Publishers Clearinghouse sweepstakes mailings were deceptive. Negotiated terms that satisfied all states and ended threat of nationwide litigation for the company.
- Conducting a 50-state survey of the law of sweepstakes and promotional games for a major consumer electronics company, and evaluated the legality of a proposal to create a major “pay-to-play” gaming web site for that company.
- Advising a leading clothing retailer on legal and Facebook platform compliance issues relating to the launch of its Facebook page, including drafting “Rules of Play” for the Page, advising on the placement of buttons and disclosures, assisting in rules creation for a related social media contest, and updating the company’s Terms of Use and Privacy Policy for its website.
- Analyzing whether the pay-to-enter “road show” version of a major game show would constitute illegal gambling under state or federal law.

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- Venable has acted as “go to” firm for sweepstakes advice and rules review for as long as the past 15 years for numerous top consumer products and services, entertainment industry, retail and agency clients, including Marriott International, Inc., Goodyear Tire & Rubber Company, Urban Outfitters, Jos. A Bank, a global food (cereal and snack) manufacturer, an international yogurt company, a multinational entertainment content provider, a national sandwich franchisor, a supermarket chain, a and other clients in the financial services, consumer electronics, food, medical, sports, retail, entertainment and educational services industries.

If you are interested in learning more about Venable’s sweepstakes and promotions capabilities, please contact Melissa Landau Steinman at (202) 344-4972.