

Sweepstakes Contests and Promotions and COVID-19

by Andrew L. Goldstein

A FREEBORN & PETERS LLP CLIENT ALERT

The current situation with the COVID-19 (“coronavirus”) pandemic is presenting challenges to all aspects of businesses, including your marketing and promotional plans. What if your company is currently running a sweepstakes or other promotional contest or is planning to launch one in the coming weeks? This article will explore various options open to you and the steps you can take.



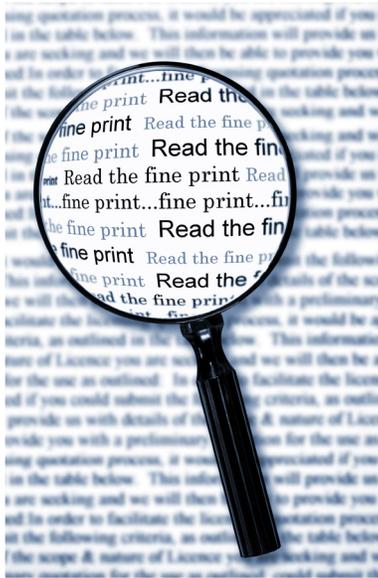
If you are currently running a sweepstakes promotion or other promotional contest, the first thing you should do as sponsor is to review the Official Rules for the promotion. Hopefully, your rules contain some type of “force majeure” clause which applies when there are circumstances beyond the control of the sponsor that affect the promotion.

I often recommend to my clients that the rules for a promotion state something to the effect that “Sponsor reserves the right, in its sole discretion, to terminate, modify or suspend the Contest if, in Sponsor’s opinion, the Contest is not capable of running as planned by reason of ... any other factors beyond Sponsor’s reasonable control corrupt or affect the administration, security, fairness, integrity, or proper conduct of the Contest.”

The current coronavirus pandemic could constitute a factor beyond the reasonable control of the sponsor that affects the administration of the contest, particularly if it affects an aspect of how one enters the contest. For example, and as discussed below, the coronavirus pandemic should constitute a factor beyond the reasonable control of the sponsor that affects the administration of the contest if a store visit is required to enter the contest and the store has been closed due to state or municipal order. Therefore, if the rules for your promotion contain “force majeure” language similar to that above, and assuming that your promotion launched prior to the onset of the coronavirus pandemic, you have the latitude to terminate the promotion or to suspend it to a time after the current crisis subsides.

The rules for some contests include language similar to the following: “Sponsor reserves the right to cancel or suspend part or all of this Contest should **virus**, bugs, non-authorized human intervention ... corrupt or impair the administration, security, fairness or proper play of the Contest.” While this language seems to be intended to refer to computer viruses, it will be interesting to see if any contest sponsors claim that this applies to the coronavirus.

Some contest rules specify that if the contest is terminated, the sponsor reserves the right to award the prize(s) to winner(s) from among the eligible entries received prior to the termination. If your rules contain this language, and if you have a sufficient number of entries from which to choose, awarding the prize(s) to those who already entered the contest is another option available to you in the event that you terminate your contest.



If the rules for your contest do not contain a type of “force majeure” clause, then you may be able to rely upon the “impossibility doctrine.” In Illinois, this doctrine operates to excuse performance of a contract when performance is rendered objectively impossible either because the subject matter of the contract has been destroyed or by operation of law. The bar to establish impossibility is high, and is not available when performance is made simply more difficult or more expensive. Whether the effect of the coronavirus on your contest would qualify for the “impossibility doctrine” depends on various factors. For example, if a contest or promotion requires a store visit and your store or restaurant has been closed because of a state or municipal order due to the coronavirus, you should have a good claim that it is impossible to continue with the promotion.

If you are planning a contest or promotion that has not yet launched, you should carefully review the Official Rules of the contest (again, if need be) to be sure that they address the current coronavirus situation. For example, the rules should contain a “force majeure” clause as discussed above.

You should also review the structure of your promotion. For instance, if your promotion requires consumers to visit your store or restaurant to collect game pieces to win a prize, you may have to revise the structure to account for the current store and restaurant closures as well as “social distancing.”

A current fine print example of this is an iconic annual sweepstakes run by Tim Hortons, a fast food restaurant chain in Canada, called “Roll up the Rim.” The contest required consumers to buy a coffee at a Tim Hortons restaurant in a promotional paper cup and to roll up the cup’s rim for the chance to win a prize. However, just days before the launch of this year’s contest, Tim Hortons took the unprecedented step of eliminating the use of its regular promotional paper cups due to concerns about the coronavirus pandemic. Tim Hortons replaced this paper cup element of the game with an at-the-register instant win component and the contest already had a digital component.

Another aspect of a contest or promotion that you should review is the prize(s) you are offering. If the prize you are offering includes an element that may be affected by the current coronavirus pandemic, such as a trip with airfare or a cruise, you may need to revisit this. Many rules for sweepstakes and promotional contests provide that “Sponsor reserves the right to substitute a prize with a prize of equal or greater value.” If the rules for your contest or promotion include a prize that may be affected by the coronavirus pandemic and if your rules allow you to offer a substitute for the prize, you may need to offer an alternate prize.

The current situation we are facing with the coronavirus presents marketing and promotional challenges now and in the near future. Be sure to analyze any contests or promotions that you currently have running or will be launching soon to be sure that they address the current concerns.

If you have questions, please contact Andrew Goldstein and stay tuned for more developments on [Freeborn’s COVID-19 webpage](#).

ABOUT THE AUTHOR



Andrew L. Goldstein
Senior Counsel

Chicago Office
(312) 360-6438
agoldstein@freeborn.com

Andrew focuses his practice in the area of Intellectual Property and Information Technology. He has extensive experience in the areas of intellectual property law, including trademark, copyright, trade dress; internet, website, cloud computing, technology, outsourcing, IoT and computer law in general; advertising, marketing, and promotion law; and entertainment law, including video production, theater and dance-related matters.

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CHICAGO

311 South Wacker Drive
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NEW YORK

230 Park Avenue
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New York, NY 10169
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(212) 218-8761 fax

SPRINGFIELD

217 East Monroe Street
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Springfield, IL 62701
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(217) 535-1069 fax

RICHMOND

901 East Byrd Street
Suite 950
Richmond, VA 23219
(804) 644-1300
(804) 644-1354 fax

TAMPA

1 Tampa City Center
201 North Franklin Street
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(813) 488-2920

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