

CLIENT ALERT

January 2010

Sweepstakes Regulations

The Department of Consumer Affairs (“DACO” by its Spanish acronym) has recently issued new sweepstakes regulations, under Act No. 5 of April 23, 1973, as amended, effective as of November 27, 2009 (the “New Regulations”).

The New Regulations provide consumers with protections regarding sweepstakes by promoters of commercial products. These regulations guarantee that participants receive the necessary information regarding the procedures, terms, conditions, and prizes of a sweepstake.

The New Regulations apply to persons who advertise, carry out, promote, conduct, organize or request by any other mean, a sweepstake to be held in order to promote a company, an institution, a product, a good, a service or any other commercial benefit. “Sweepstakes” generally include any activity where an offer is made to more than one person, of the opportunity or expectation that one or more, but not all of them will receive one or more prizes, with chance being the predominant element for selecting the winner.

Information to be Disclosed or Published

The New Regulations bring about important changes in the administration of sweepstakes, such as:

1. The new requirement that sweepstake rules be published in the same language(s) as used in the advertising campaign. (e.g., if the advertising

materials are both in Spanish and English, the rules must be in both languages, whereas under the old regulations this information had to be available in Spanish)

2. A new requirement regarding the disclosure of odds of winning each prize.
3. New rules, including disclosures and document retention procedures regarding Instant Win Games (i.e., sweepstakes where consumer may become a winner immediately or receive prizes through the mere possession of entries) and Draws (i.e. sweepstakes where the consumer must send, submit or deposit entries which may be selected to determine the winners by random drawing).

Promoters’ Obligations

New Regulations simplify some of the promoters’ obligations:

1. Prior requirement of the presence of a Notary Public to certify certain procedures of the sweepstakes and the identity of participants are no longer present under the New Regulations.
2. Any taxes due on the date of the delivery of the sweepstakes prizes shall be the responsibility of the winners. Prior regulations imposed such responsibility on the promoter. It

is unclear how this will be coordinated with otherwise applicable guidance promulgated by the Puerto Rico Treasury Department regarding tax withholding on these prizes.

3. If any prize offered becomes unavailable for any reason, the promoter must provide an alternate prize of equal or greater value based on the advertized prize's retail value. Prior regulations required a cash payment to be made to the winner based on the market value of the prize.

Penalties

DACO is authorized, upon prior notice, to impose and collect fines of up to the maximum permitted by Act No. 5 of April 23, 1973, as amended, per violation, for any breach of the provisions of the New Regulations or of the orders and resolutions issued there under (generally up to \$10,000).

Please note that the matters discussed herein are prepared for informational purposes. It is not intended as, and does not constitute legal advice. If you would like to receive a copy of the New Regulations, or should you have any questions regarding said regulations or any of the issues discussed herein, please contact us at 787-274-1212.