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“Like our Facebook page and you could win a tablet computer” - are you following the rules?

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Promotional contests are among the advertising activities favoured by businesses. In the age of social media, they are increasingly frequent and popular — “Win a trip down South!”, “Fantastic stroller to be won among everyone who likes our Facebook page!”. However, not everyone is aware of all the rules applicable to contests of this kind.

It is important to know that in Canada and Québec a number of laws govern promotional contests. It is crucial that the rules for such contests be drafted in accordance with legislative requirements in order to minimize the risks of legal action and bad publicity.

Legislation applicable throughout Canada

“No purchase necessary”
Under the *Criminal Code*, one may not require of a consumer that he or she purchases a product or service, or pay any other valuable consideration, to be entitled to participate in a promotional contest. The organizer of a contest must therefore include the statement “no purchase necessary” in the rules, and provide for another manner of participating, for example by way of a hand-written letter sent to the contest organizer. It is crucial to abide by the duties set forth in the *Criminal Code*, as offences are punishable by fine and even imprisonment.

Skill-testing question
The *Criminal Code* also provides that winners may not be determined by mere chance. It is in order to comply with this requirement that it has become common practice for organizers of promotional contests to require of a participant that he or she correctly answers a mathematical skill-testing question.

Mandatory disclosures
The *Competition Act* also contains provisions applicable to Canadian promotional contests aimed at ensuring fair competition. It is crucial that the contents of a promotional contest’s rules meet the requirements of the Act, for instance by disclosing the number and approximate value of the prizes, the regional distribution of the prizes, the type of skill-testing question required, details concerning the chances of winning, the date the contest closes, and any fact within the knowledge of the contest organizers that affects materially the chances of winning.

Furthermore, when announcing your promotional contest (over the radio, on social media, at a product’s point-of-purchase, etc.), you must also disclose the specific items mentioned above.

Penalties

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Note that a breach of the rules on adequate and fair disclosure in connection with the organization of a promotional contest can result in an order being issued against you, compelling you to comply with the applicable legal requirements, to issue a corrective notice and/or to pay an administrative monetary penalty of up to, for the first order, $750,000 in the case of an individual, or $10,000,000 in the case of a corporation.

Legislation applicable in Québec

In Québec, in addition to the legislation applicable throughout Canada, the *Act respecting lotteries, publicity contests and amusement machines* (the *"Publicity Contests Act"*) and the *Rules respecting publicity contests* provide for the application of a specific legal regime to most promotional contests (publicity contests) in the province.

Contests in which the value of prizes exceeds $100
If you organize a promotional contest in which the total value of the prizes exceeds $100, you must conform to the requirements set out in the *Rules respecting publicity contests*. Many items must imperatively be included in the text of the contest rules and advertisements, some of which are identical to those required by the *Competition Act*.

Moreover, before the publicity contest is launched, you must pay the duties owed to the Régie des alcools, des courses et des jeux (the Liquor, Racing and Gaming Board) (the "Board"). The amount of such duties is based on the total value of the prizes and the place of residence of the participants. You must also send to the Board a notice of the holding of a publicity contest within a time limit which will vary based on the total value of the prizes offered.

Contests in which the value of prizes exceeds $2,000
If you organize a contest in which the total value of the prizes exceeds $2,000, several other rules apply, including the obligation to file with the Board the contest rules and the text of any advertisements within the prescribed time limits. You may also be compelled in certain cases to furnish security. You will also have to communicate with the Board if you want to change or cancel a contest after it has been launched.

Note that the naming of a prize winner does not result in a release from the duties owed to the Board. For one thing, a written report must be filed with the Board within 60 days following the date on which the prize winner is named. Furthermore, certain documents enabling the Board to verify whether the contest has been properly carried on must be kept for 120 days following the date on which a winner is named.

Contests directed at children
One thing not to forget is that the *Consumer Protection Act* prohibits all advertising directed at children under 13 years of age, which includes publicity contests.

French version
Under the *Charter of the French Language*, the rules and the items required to be disclosed in the advertisements concerning the contest must be published in French, including in connection with publicity contests held exclusively on-line.

Rules applicable to social media

You are considering organizing a contest on Facebook, Instagram or Twitter? Note that many rules govern contests on these platforms and that these rules can be amended at any time. Hence the importance, before every contest launch, of reviewing the applicable rules, since certain social media

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platforms may unilaterally decide to shut down your business's page if you do not comply with them.

Conclusion

The regime applicable to persons organizing promotional contests in Québec is particularly restrictive. Contest organizers are well advised, as a matter of precaution, to include provisions to protect themselves, in addition to all the items required by law. The running of promotional contests involves a great many pitfalls, which your legal advisor will help you successfully avoid.

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