

Trademark, Copyright, and Sweepstakes Basics

*Legal Considerations for Marketing,
Branding, and Promotions*

Presenter



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- Practice focuses on intellectual property and advertising litigation and transactions.
- Represents consumer marketing companies—from small start-ups to some of the best-known brands in America—in delivering practical solutions to problems.
- Works as a professional musician and has a recording studio in his home basement.

Building Your Brand

- **Meet the Definitions**
- **Interaction with Consumers**
- **Interaction with Other Brands**

Building Your Brand



What Brands Want . . .

Consumer Interaction

Giveaways



Definitions

Sweepstakes

Contests

Definitions

Sweepstakes

*Game of
Chance*

Contests

*Game of
Skill*

Definitions

Lottery

From Wikipedia, the free encyclopedia

*"Lottery ticket" redirects here.
For the film, see [Lottery Ticket \(film\)](#). For other uses, see [Lottery \(disambiguation\)](#).*

A **lottery** is a form of gambling which involves the drawing of lots for a prize.

Definitions



Definitions



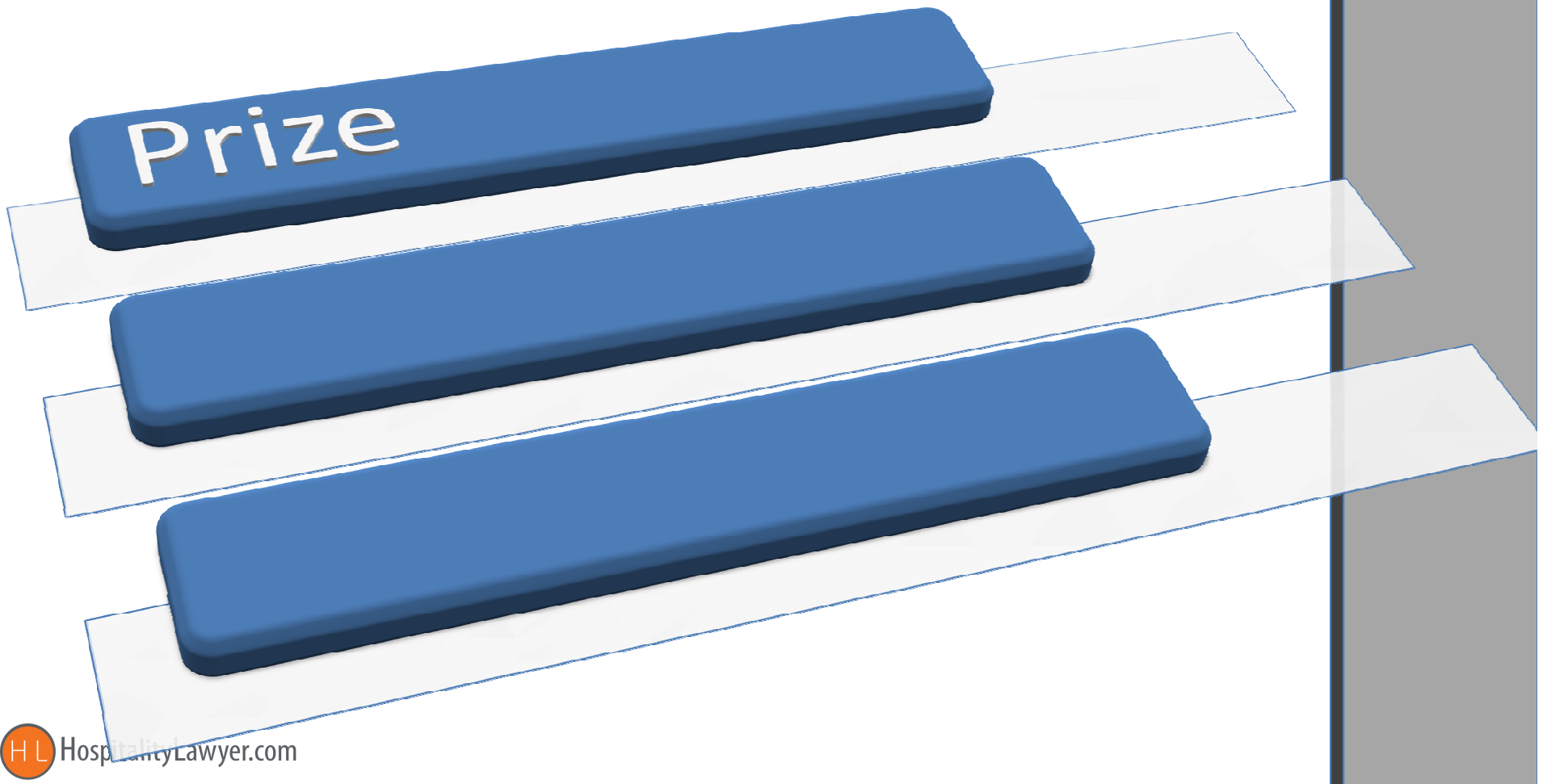
Definitions



Definitions



Lotteries



Lotteries

Prize

Consideration

Lotteries

Prize

Consideration

Chance

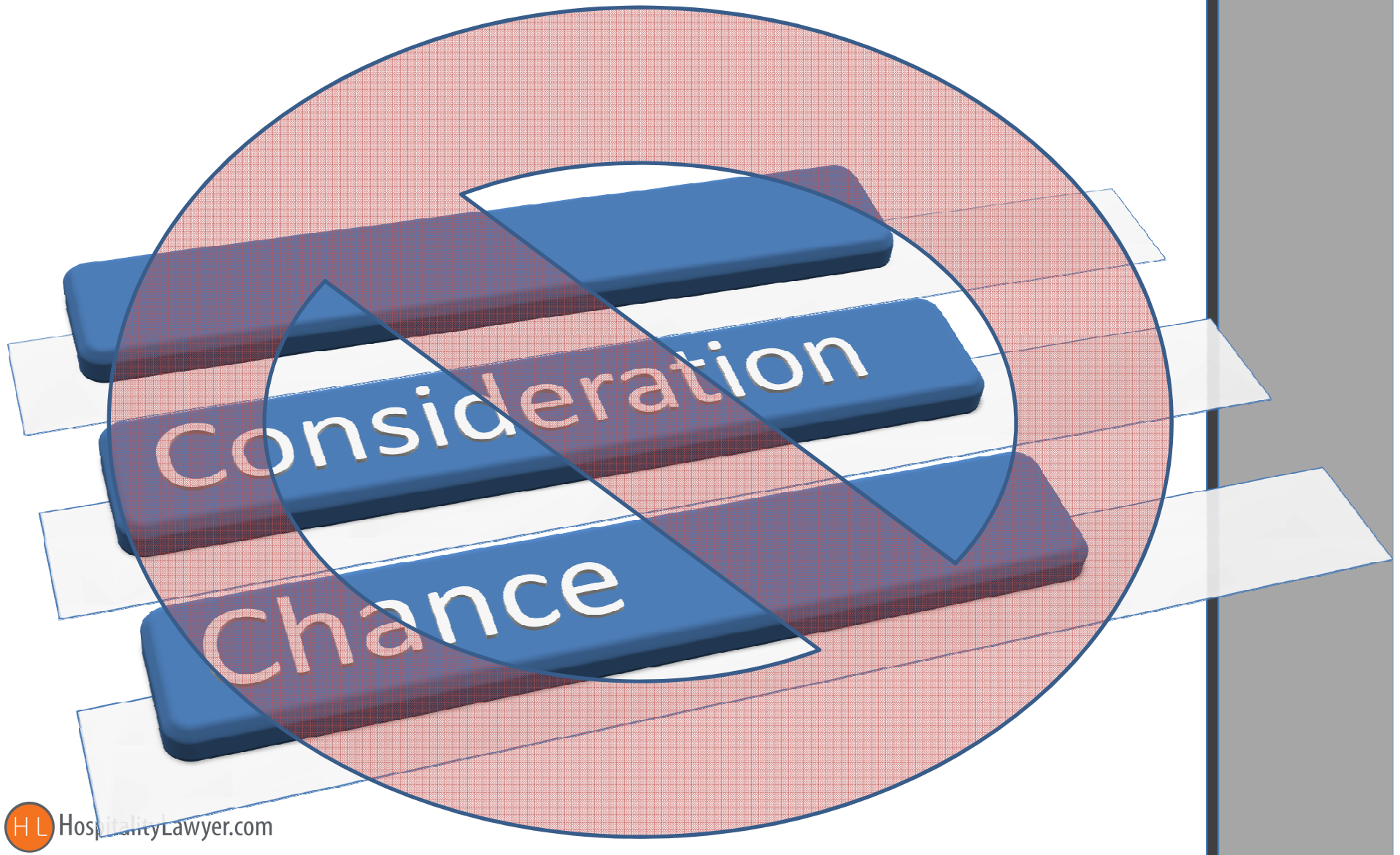
Lotteries

You are not
allowed to run
a lottery.

Lotteries

Remove an
element.

Lotteries



Lotteries

Prize

Consideration

Lotteries



Sweepstakes—Free Entry

- Equal Dignity Rule
- Consideration is a benefit/detriment:
 - Store visits (Ohio)
 - Attendance at drawing (Iowa)
 - Self-Addressed Stamped Envelope (Vermont)

Consumer Interaction

User-Generated Content



User-Generated Content

20th Anniversary
DESSERT CONTEST

WE'RE LOOKING FOR A CREATIVE & DELICIOUS 20TH ANNIVERSARY DESSERT MADE WITH CHILES TO BE FEATURED DURING CHILEFEST '09

If your dessert is THE BEST you'll win:

A PRIVATE dinner for 10 at your house
AND
Your dessert featured on the Chile Fest '09 Menu SEPT 8th through 27th

2nd Place - \$75 Z'Tejas Gift Card
3rd Place - \$50 Z'Tejas Gift Card

Z'TEJAS 20 YEARS 1989-2009
Host, Planner, Inspiration

CHILE FEST '09

User-Generated Content

- Issues:
 - Who owns the content?
 - How much do you take?
 - Who is judging the content (for a contest)?

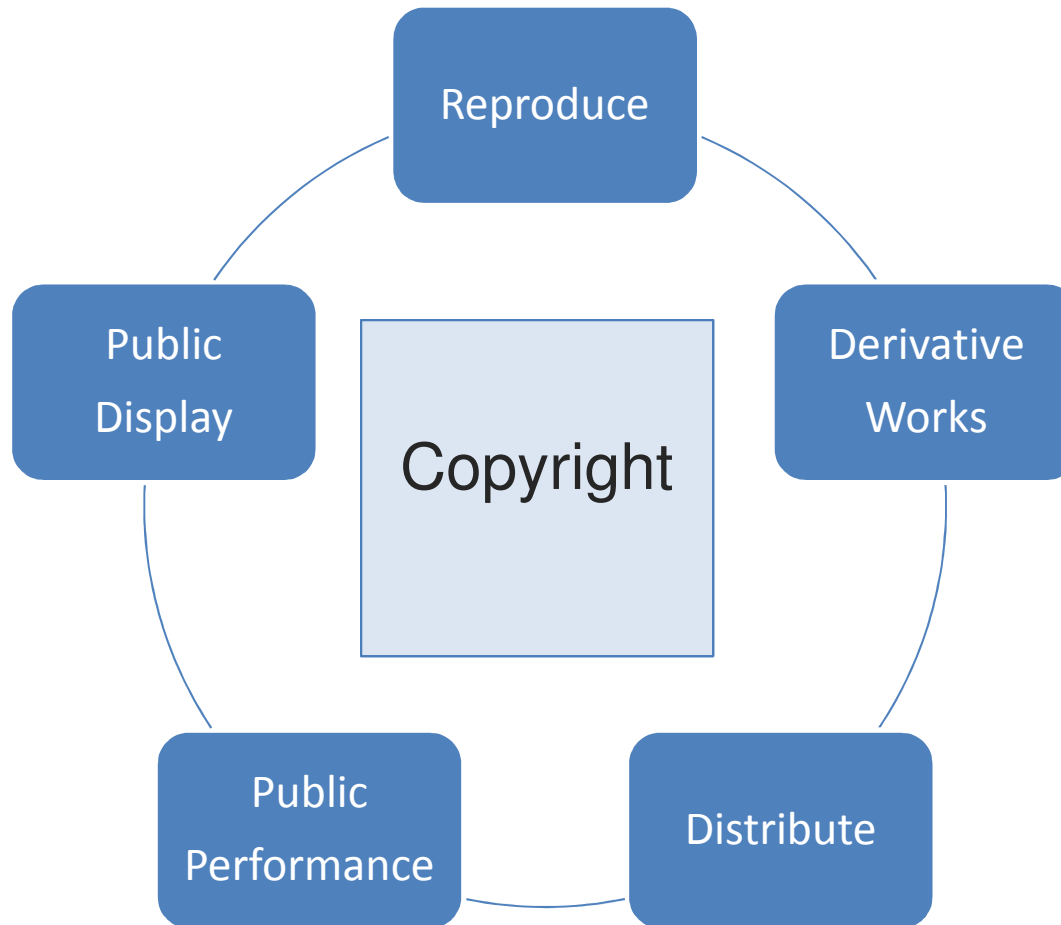
User-Generated Content

Ownership Issues:



User-Generated Content

- How much do you take?



User-Generated Content

- Who is Judging?
 - Qualified judges
 - Public vote?
 - Clear criteria

Know the Forum



Know the Forum



Know the Forum

General Guidelines:

- No entry for those under 18.
- Entry must be free.
- Provide appropriate releases for Facebook.
- Watch out for international competitions.

Know the Forum

**IT'S ALL ABOUT
THE
APPLICATIONS.**

Know the Forum

You cannot:

Notify winners through Facebook, such as through Facebook messages, chat, or posts on profiles or Pages.

You can:

Collect an email or address through the third-party application for the promotion.

Know the Forum

You cannot:

Condition entry in the promotion upon a user providing content on Facebook.

You can:

Use a third-party application to condition entry to the promotion upon a user providing content.

Know the Forum

You cannot:

Instruct people to sign up for a Facebook account before they enter the promotion.

You can:

Instruct users to visit the third-party application to enter the promotion.

Interacting with Other Brands

Interacting with Brands

CAUTION



Interacting with Brands

- Clearance Trademark Searches for Promotion Name and Tag Lines
- Disclaimers for Branded Prizes
- Big Problems with Big Promotions

Interacting with Brands

Likelihood of Consumer Confusion?

- (1) The strength of plaintiff's mark;
- (2) The similarity of the parties' marks;
- (3) The similarity of the parties' products;
- (4) The marketing channels for the parties' products;
- (5) The likelihood of expansion of the product lines;
- (6) Actual consumer confusion between the two marks;
- (7) The defendant's intent in adopting its mark; and
- (8) Likelihood of expansion of the product lines.

Interacting with Brands

Coors LIGHT
FOLLOW YOUR TEAM TO THE FINALS!

Dick Vitale

IT'S TOURNNEY TIME, BABY!

ENTER TO WIN.

COORS LIGHT™ TOURNNEY TIME™ SWEEPSTAKES OFFICIAL ENTRY FORM

Enter today for a chance to win at a special drawing.
Sweepstakes ends at 11:59 PM on Tuesday, December 31, 2008.
See Complete Official Rules at [www.coors.com](#) for details and prize details.
Sweepstakes begins on or after February 1, 2009.
Entries must be received by April 30, 2009.
Complete this entry form and mail it to: Coors Light Tournney Time Sweepstakes, P.O. Box 1724, Golden, CO 80402-1724.

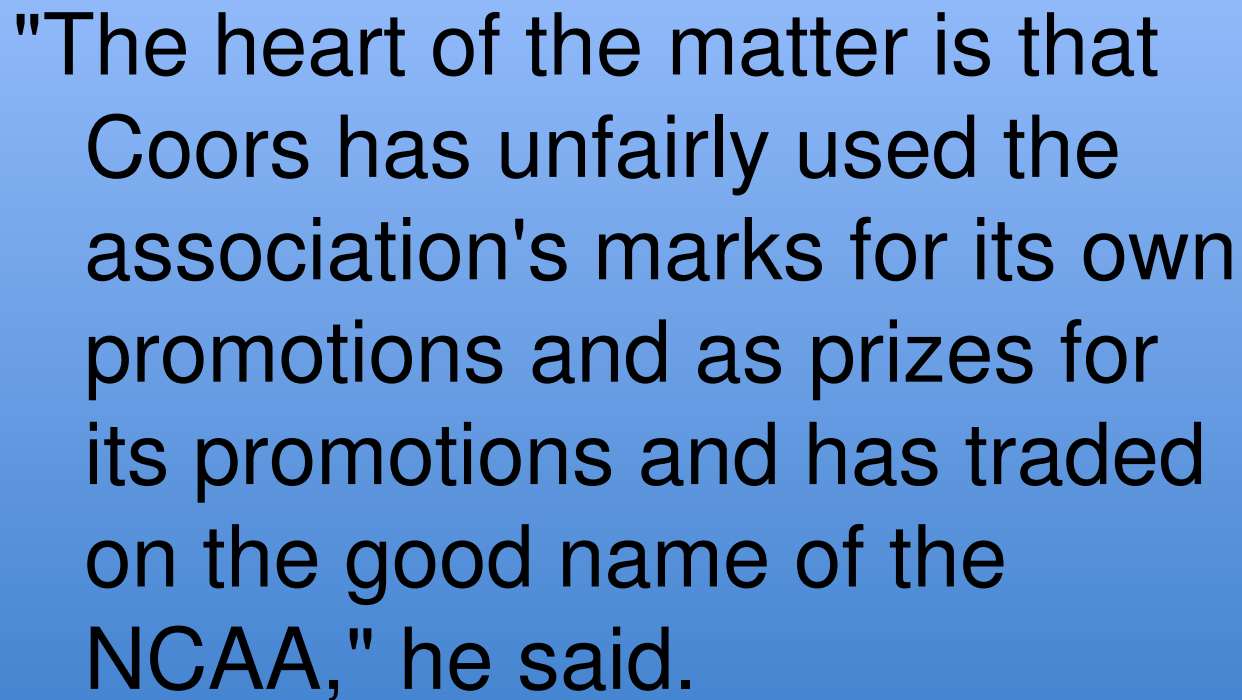
Name _____ Age _____
Address _____
City _____ State _____ Zip _____
Telephone Number _____ Birth Date _____

Every bottle of Coors Light is now marked with a special code.
See Complete Official Rules at [www.coors.com](#) for details and prize details.
Sweepstakes begins on or after February 1, 2009.
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NEEDS IT

Two bottles of Coors Light beer are shown on the right side of the advertisement.

Interacting with Brands



"The heart of the matter is that Coors has unfairly used the association's marks for its own promotions and as prizes for its promotions and has traded on the good name of the NCAA," he said.

Promotions

- **Meet the Definitions**
 - Sweepstakes—Consideration Issues
 - Contests—Judges and Criteria Issues
- **Interaction with Consumers**
 - Know the rules for the type of promotion.
 - Know the special rules of the forum.
 - Be aware of what you are taking from promotion participants if using UGC.
- **Interaction with Other Brands**—Be aware of limitations when interacting with other brands.