

Paper – The Perils of Social Media Promotions in the Hospitality Industry

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Truth in advertising is not only a best practice; it's the law. It applies to all media – from newspapers and magazines to radio spots to online platforms, such as blogs or social media. It is required in both overt advertisements and implied claims buried in otherwise innocuous posts. As such, it creates a minefield for hoteliers trying to drive traffic in a crowded marketplace.

Endorsements and Testimonials. A hotel is responsible for false or unsubstantiated statements made through its endorsements, or for failing to disclose a material connection to the endorser. According to the Federal Trade Commission (“FTC”):

- “Endorsement” means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.
- “Endorser” means the party whose opinions, beliefs, findings, or experience the message appears to reflect.

That is, you are responsible for both (a) the claims that reviewers make in reviews of your hotel property; and (b) reviews or comments/posts made by employees. Whether on a personal blog, a social networking page, or in similar media, you must disclose any relationship that exists between the author and the hotel. This goes to the credibility of a review and how much weight a consumer should give to the words and “opinions” of the author.

Social Media. Not only is the hotel required to comply with the federal and state laws, but you must also comply with the requirements of social media platforms. The rules and regulations of each provider are evolving at a lagging pace to keep up with technological advancements, and the hotel must be aware the changing requirements.

Promotions. A promotion is a marketing strategy devised to publicize or advertise a product, organization, or event. When the hotel decides to use a sweepstakes or contest as a way of promoting itself, there are a number of legal requirements implicated by that decision.

Lotteries. A lottery is generally defined as a promotion in which all three of the following elements are present: prize, chance, and consideration. Lotteries, except those that are state operated, are illegal under federal law and the laws of all fifty states. The penalties for failure to comply with federal and local laws depend on the venue and may include: consumer redress, awarding multiple prizes, fines (may be significant), cease and desist orders from future promotions, and corrective advertising.

Sweepstakes. A sweepstakes is generally defined as a promotion involving the elements of prize and chance. That is, sweepstakes are promotions in which winners are selected at random to win a prize.

Consideration. Consideration can be monetary or non-monetary. In at least 33 states, statutes or case law clearly state or suggest that only monetary consideration will trigger a lottery law challenge; six states do not expressly limit the definition of consideration to a monetary requirement; the remaining states do not clearly define consideration. This is an evolving issue (*e.g.*, not long ago, requiring internet access to enter a promotion was deemed consideration in some states). Current “hot topics” include text messaging, user-generated content and social networking sites which may require a fee or action on behalf of the entrant.

Alternative Method of Entry “AMOE”. A chance promotion with a viable, free AMOE which does not place the entrant at any real or perceived disadvantage vis-à-vis those who pay to play should not run afoul of lottery laws. Key considerations to avoid: (a) lack of universal availability; (b) separate deadline dates (especially problematic for mail-in entries); (c) separate prize pools; (d) disparity in number of chances to win; (e) insufficient number of free entry opportunities/methods; (f) real or perceived disadvantage to those who enter via AMOE; (g) burdensome entry requirements compared to purchase entries. The AMOE must have “equal dignity” to the purchase entries.

Contests. Contests are promotions in which winners are selected to win a prize on the basis of bona fide skill or objective criteria. Several state prize promotion/gambling laws prohibit requiring consideration, even in bona fide skill contests. In determining whether or not a promotion is a skill contest, states generally employ one of three tests: any chance test; dominant element test; material element test; or gambling instinct test. The hotel should focus on ensuring there are qualified judges and that any judging criteria applied to entries is objective.

Official rules. Official rules serve as the contract between the sponsor and the consumer.

They are the most crucial element of any promotion and should include:

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| <ul style="list-style-type: none"> • No purchase necessary (conspicuous) • Entry instructions • Limit on entries • Deadline dates • Limitation on sponsor's liability • Disclaimer for late/lost/misdirected mail • Void where prohibited • Minors clause | <ul style="list-style-type: none"> • Late/lost/illegible/postage due ineligible • Mail-in limits per envelope • Reproduced entries disqualified • Odds of winning • Voided states (if any) • Taxes on prizes • Affidavit of eligibility | <ul style="list-style-type: none"> • Prohibition on faxed entries • Prize description (incl. # and retail value) • Travel/auto/event restrictions • Winner selection (when/how) • Sponsor's name and address • Duration • Winners' list information | <ul style="list-style-type: none"> • Eligibility (age/residence/occupation/exclusion for family members) • Releases (publicity, liability, travel) • Entries property of sponsor • Judges decisions final • Right to modify/terminate/suspend |
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Abbreviated rules must appear in all advertisements, entry forms, and promotional materials.

Procedural Requirements. Hotels considering a promotion should know that there may be registration requirements in AZ, FL, NY, and RI and bonding requirements FL and NY.