



Sweepstakes & Contests: A Global Legal Perspective



SECOND EDITION



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INTRODUCTION

We are very pleased to share with you the Second Edition of the Global Advertising Lawyers Alliance guide to conducting sweepstakes and contests around the world. With the ever-increasing importance of social media for advertisers and marketers, sweepstakes and contests continue to be an important way to engage with consumers globally. We hope that this book – the most comprehensive ever published on the subject – will help make that job a bit easier.

In this book, we present key issues for advertisers and marketers to consider when conducting sweepstakes in more than seventy countries, across six continents. We cover topics such as which types of games are legally permissible, which countries require registration, restrictions on the types of prizes that may be offered, disclosure requirements, and many others.

While this book is no substitute for consulting counsel in the relevant markets, it should help you begin to consider the myriad of issues that need to be faced when conducting sweepstakes and contests around the world.

Special thanks to Melissa Steinman from Venable LLP, one of GALA's United States members, and Stacy Bess, GALA's Executive Director, for their work in helping us to publish this.



ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 90 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully. GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients. GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

For further information about GALA, please contact the relevant member directly or alternatively GALA's Executive Director, Stacy Bess at:

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GREECE

Are chance-based games (ie, random draw promotions, instant win games) generally permissible?

Yes, they are permissible provided that no wager/stake is involved. Promotional chance-based games that do not abide by this rule may be considered illegal lotteries.

Sponsors must ensure that the winner(s) will not incur any cost to claim/receive the prize(s).

Are skill-based contests (ie, essay contests, photo contests, user-generated content contests) generally permissible?

Yes, these contests are generally permissible. Nevertheless, sponsors must ensure that the winner(s) will not incur any cost in claiming/receiving the prize(s).

The self-regulatory advertising code (Hellenic Code of Advertising & Communication Practice—“HCACP”) specifies the following information which must be made clear and unambiguous to consumers before participation in the promotion (both skill-based and chance-based promotions):

1. eligibility rules;
2. costs associated with participation, other than for communication at or below standard rate (mail, telephone, etc.);
3. the number, value and nature of prizes to be awarded and whether a cash alternative may be substituted for a prize;
4. in the case of a skill contest, the nature of the contest and the criteria for judging the entries;
5. the selection procedure for the award of prizes;
6. the closing date of the competition;
7. when and how the results will be made available;
8. whether the beneficiary may be liable to pay tax as a result of winning a prize;
9. the time period during which prizes may be collected;
10. where a jury is involved, the composition of the jury; and
11. any intention to use winners or winning contributions in post-event activities.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. Greek law does not impose any administrative filing or license requirement prior to offering a chance-based game or a skill-based contest. However, some sponsors voluntarily file the promotion terms with a public notary.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The commercial practice of making the participation in a prize promotion conditional upon the purchase of a product is not forbidden *per se* (provided that there is no mark up in the price of the product), but, depending on the specific characteristics of each promotion, this practice could be considered to be unfair if it entices the consumer in an excessive manner. Given that such practice might qualify as unfair, from our experience, Greek sponsors tend to offer a free (no purchase) route in order just to be on the safe side.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (eg, posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There is no such restriction with regard to the selection process.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes. A separate prize pool is not required. Nevertheless, it must be made clear to the Greek participants that the winner(s) may not come from Greece.

Are there any restrictions on the type, nature or value of the prizes (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions; however, sponsors must clearly and prominently state the number, value and nature of prize(s) to be awarded. More specifically, sponsors should be particularly careful when describing the prize so as to make clear any additional conditions that must be met by the winner (eg availability to travel on certain dates, passport or visa requirements, etc) and any costs that need to be incurred by the winner in order to take advantage of the prize. For instance, if the prize is described as a “trip to Greek islands”, the Official Rules of the promotion must state whether the prize includes air tickets/hotel accommodation/out of pocket expenses, etc.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies’ night promotions, scholarships offered only to a minority group)?

Yes. Special rules may apply in relation to the participation of children/employees/special groups of people; therefore, in such cases the sponsor/promoter should seek specific legal advice.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Under Greek tax law, prizes granted through promotions organized in Greece, whose value exceeds €1000 are subject to a withholding tax of 20%. The person responsible to pay this tax is the winner.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

If the entries submitted include material protectable under Copyright Law, it is permissible for the sponsor to obtain a grant of the relevant author's rights. Nevertheless, Greek Copyright Law (Law No. 2121/1993) provides the following restrictions:

1. Copyrighted works enjoy protection for 70 years following the death of the author; thereafter, they fall into the public domain. Consequently, in accordance with Greek law, the grant/transfer of rights is valid for the duration such rights are legally protectable (and not in perpetuity).
2. In addition, a copyright license may not refer to forms of exploitation which were unknown on the date of the contract. Thus, under Greek law, the sponsor would not acquire the right to exploit the work in media/forms invented after the date of contract.
3. To be valid, any grant or transfer of rights must be in writing,
4. In the light of Greek Copyright Law, it is compulsory to pay an economic remuneration to the author for the exploitation of his/her IP rights. In cases of contests which require the creation of a video etc, the opportunity to enter the competition and claim a prize may be considered to be the author's remuneration.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

These requirements may not be enforceable under Greek law.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and all materials associated with the promotion must be provided in Greek.

Are there restrictions on the use of personal information collected from entrants?

In relation to promotions that involve processing of personal data of participants, a number of obligations fall on the sponsor (which qualifies as a personal data controller). In view of its legal position, the sponsor must disclose to participants the following information, before any data processing takes place:

1. who is the sponsor-data controller (name/address/contact details and contact details of the Data Protection Officer, if any);
2. which personal data will be processed (eg name/address/contact details of entrants/any personal data contained in the entries submitted);
3. the purpose of the process (normally it is the carrying out of the promotion and notification of the winners);
4. the legal basis for processing personal data (eg consent/performance of a contract/legitimate interest etc);
5. whether the personal data are going to be transferred to third parties;
6. whether the personal data are going to be transferred outside the EU;
7. how long the data will be kept;
8. information regarding data subject rights (right of access to data/right to object etc);
9. the right to lodge a complaint with the supervisory authority (Hellenic Data Protection Authority).

It is advisable that the participant confirms (eg, through a checkbox) that he/she has read and understood the Privacy Notice.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

It could be subject to Greek penal laws (if, for example, a chance-based game offered online is, in fact, an illegal lottery).

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

To our knowledge, there are no recent decisions.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is advisable that the sponsor reserves the right to amend the Official Rules of the promotion; any such amendments must be properly notified to participants.