



# Contests and Lotteries – Legal Issues for Broadcasters

*David Oxenford*

*Connie Pendleton*

*Davis Wright Tremaine LLP*

*Washington DC*

*For the Kansas Association of Broadcasters*

*May 2012*

# Topics for Discussion

---



- FCC Issues
  - Following Rules
  - Awarding Prizes
  - Publicizing Rules
  - Online Contests
- Lottery questions
  - FCC issues
  - Non-FCC issues
- Contest Rule Considerations
- Other issues

# FCC Rule Section 73.1216

---



- A licensee that broadcasts or advertises information about a contest it conducts shall:
  - fully and accurately disclose the material terms of the contest, and
  - shall conduct the contest substantially as announced or advertised.
  - No contest description shall be false, misleading or deceptive with respect to any material term.
- A contest is a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public

# What contests are covered

---



- Contests conducted by the licensee. Not applicable to:
  - licensee-conducted contests not broadcast or advertised to the general public
  - the commercial advertisement of non-licensee-conducted contests, or
  - a contest conducted by a non-broadcast division of the licensee or by a non-broadcast company related to the licensee
- FCC seems to be saying that the last exception does not apply to contests on station websites of advertised by the station
- Note that other rules and laws may apply even where FCC rules don't

# Disclosure of Material Terms

---



- Have written rules
- Plus broadcast material terms on station enough so that reasonable participant will hear them
- Terms:
  - how to enter or participate;
  - eligibility restrictions;
  - entry deadline dates;
  - whether prizes can be won;
  - when prizes can be won;
  - the extent, nature and value of prizes;
  - basis for valuation of prizes;
  - time and means of selection of winners;
  - tie-breaking procedures

# Contest Can't Be Misleading

---



- “No contest description shall be false, misleading or deceptive with respect to any material term”
- Don't have an accidental contest
- Follow contest rules, even if it means giving away prize quickly
- Make sure that everyone is familiar with the rules
- Don't make up new rules (e.g. for the unanticipated winner – illegal alien, a competitor)
- Anticipate the unanticipated – unavailability of prizes, technical glitches, ties, multiple winners, etc.

# Think About Contest Rules

---



- Anticipate prizes not being available
  - Concert tickets – what if the concert is cancelled?
  - Third-party fulfillment – what if third-party doesn't pay up?
- Anticipate problems with the contest selection methodology
  - Two keys that operate the car
  - Two participants finding the treasure
  - Judges who can't agree
- Anticipate issues with the technology
- Provide station with lots of outs and absolute rights to decide close questions
- Get releases for publicity from all participants
- Provide internal means of complaint and redress

# Think About How the Contest Will Play Out

---



- Make sure that means of entry are clear and adequate to get participants
- Make sure that there is likely to be a winner or a way to award prize in other way
- Watch for public safety issues – blocking traffic, encouraging dangerous or risky public behavior
- Watch for potential liability issues for injury to participants – Hold Your Wee for Wii



# Third-party contests - FCC Issues

---



- Prohibition against promoting lotteries
- Exceptions now for legal gaming and state lotteries
- Otherwise look at:
  - Prize
  - Chance
  - Consideration
  - Exception under Charitable Gamings Act
    - Charitable contests
    - Occasional and Ancillary Contests

# Other Non- FCC Issues

---



- State Laws
- FTC issues
- Special issues for contests directed to kids



## Contest and Lotteries

*David Oxenford*

[davidoxenford@dwt.com](mailto:davidoxenford@dwt.com)

*Connie Pendleton*

[conniependleton@dwt.com](mailto:conniependleton@dwt.com)

[www.broadcastlawblog.com](http://www.broadcastlawblog.com)