

# The Ins and Outs of Contests and Promotions

A franchise system can implement successful promotions and contests while protecting itself from the legal risks and pitfalls.

BY RITCHIE TAYLOR, CFE



**C**ontests and promotions provide franchisors with an opportunity to enhance brand value by drawing customers to their locations in a manner targeted to drive franchise revenue. Contests and promotions can help drive unit-level profitability and increase publicity for the brand

by a magnitude the franchise system could not accomplish on its own with traditional advertising.

However, there are legal and logistical traps franchisors must avoid for the contests or promotions to be a success and not a nightmare. Failure to avoid these traps can lead to substantial fines, penalties and negative customer sentiment.

Several years ago a major consumer food company sponsored a contest where contestants were trying to find two matching pieces of a car; the winner would receive a minivan. However, the printer inadvertently printed not five, but thousands of winning pairs, costing the sponsor millions of dollars to settle the winners' claims.

To avoid these kinds of pitfalls, franchisors should make sure to follow these nine key steps to a successful contest or promotion.

## 1. Determine whether the contest is regulated.

Both federal and state laws typically prohibit games of chance if they (1) award something of value as a prize, (2) involve an element of chance and (3) involve exchange of consideration. All contests involve some kind of prize, whether it is money, property, rewards points or coupons. The chance element is present whenever there is a random selection of winners where the entrant has no control, including mechanisms such as random drawings, winning pieces or pre-selected winning numbers. Because prizes and chance

are involved in almost every contest, the best way to avoid the game of chance prohibition is the consideration element. Consideration means payment of tangible value by the entrant, which includes substantial time or effort to enter, the contest. If the contestant is provided with a cost-free alternate method of entry with minimal time involved to enter, such as mailing in a postcard as instructed in the game rules, the contest will not be considered a game of chance in most states. As long as both the alternate method of entry and traditional participant are given equal dignity in their chance to win, then the contest does not constitute a game of chance under most state laws.

2. **Identify what laws apply.** The franchisor needs to determine in advance where the contest will be implemented so legal counsel can correctly identify the applicable state or foreign laws and make sure they are properly addressed in the contest rules. Because foreign laws could have different requirements, the foreign jurisdictions need to be identified in advance. For example, Canada requires an element of skill be involved in winning, which often involves the winner solving a simple math problem as a condition of winning the prize. Contests to be conducted in both the United States and Canada will require modifications to the contest rules to include a skill component.

3. **Plan for success.** The old adage “measure twice and cut once” rings particularly true for contest planning. Because the contest rules cannot be altered once submitted to state regulators, it is critical for contest planners to map out in advance the details of the contest in determining target jurisdictions for contest participants, contest rules, alternative methods of entry and other contest requirements. Legal counsel should review and finalize the rules

*(Continued on page 53)*

(Continued from page 51)

before the promotional materials are printed. Once submitted to the states for approval, any change in the rules could result in needless delays due to restarting the entire regulatory approval process.

---

## Social media contests and promotions must be compliant with the social media platform's terms of use.

---

4. **Protect against social media risks with strong terms of use.** Social media contests and promotions are being successfully utilized by many franchise systems. Social media contests and promotions must be compliant with the social media platform's terms of use. For example, a Twitter promotion that requires duplicate or near duplicate postings is a violation of Twitter's terms of use and would permit Twitter to disconnect the offending account.
5. **Review privacy policy.** Contests and promotions are valuable marketing tools to gather information about the brand's customer base. However, franchise systems need to carefully ensure the information they gather and its intended use does not violate the system's privacy policy. The Federal Trade Commission has been active in pursuing companies whose activities are outside the scope of permitted use of information gathering set forth in their privacy policies. If children are potential participants in an online promotion, the promotion needs to be compliant with the Children's Online Protection Act.
6. **Don't infringe on trademarks.** Often franchisors like to have promotions around sporting events, such as the Super Bowl. Take care in structuring the promotion so the promotion does not inadvertently infringe on the trademarks owned by the sporting event promoters. Likewise, if the prize constitutes a trademarked product or service, the contest sponsors should be careful to clearly delineate ownership of the trademarked product and the brand's relationship with the trademark owner.
7. **Review additional considerations for promotions.** Often franchise systems have promotions, discounts or coupons where all qualifying customers receive a discount on a product if certain requirements are met. When using these types of promotions, take care to adequately describe the scope of the offer to avoid allegations of fraud. For example, the term of the promotion should clearly outline any geographical limitations, limits on the number of redemptions per visit, size restrictions or minimum purchase requirements. If the promotion involves mail or telephone ordering, the promotion needs to comply with the Federal Trade Commission's rules for these types of transactions. Lastly, use of the word "free" or equivalent wording can trigger application of federal and state laws. Failure to comply with these rules can bring claims for fraud by state enforcement offices or private actions, which may require disclosure in Item 3 of the system's Franchise Disclosure Document.
8. **Outsource with experienced service providers.** Smaller franchise systems should not assume they cannot offer contests and promotions on par with larger competitors. Many of the functions of promotions and contests, such as printing, order fulfillment or public relations, can be outsourced to third-party providers with both the infrastructure and experience to help the brand design and implement a successful contest or promotion.
9. **Use caution for regulated industries or products.** There may be additional regulatory requirements if the franchise system is involved in a regulated industry, such as financial services or the promotion involves regulated products, such as alcohol, tobacco or motor fuel. State laws may prohibit or place restrictions on the ability of the promotion to include these products or services in the promotion. Other states restrict or prohibit entry forms or game pieces in alcohol beverage packaging.

Following these steps will help a franchise system implement successful promotions and contests while protecting itself from the legal risks and pitfalls. ■

---

*Ritchie Taylor, CFE, is a shareholder with the law firm Manning Fulton, where he practices franchise law. Taylor serves on the Board of Governors of the Institute of Certified Franchise Executives. He can be reached at 919-787-8880 or [taylor@manningfulton.com](mailto:taylor@manningfulton.com).*