

Sweepstakes Advertising: A Consumer's Guide

Direct mail sweepstakes promotions offer consumers the chance to win money and prizes in return for opening an envelope and returning the entry form. As more companies use sweepstakes to draw attention to their products and services and participation increases, growing numbers of individuals are winning prizes, many in quite substantial amounts.

You should know that legitimate companies that offer sweepstakes promotions want your experience with their offers to be enjoyable — and they want you to respond. They also want you to understand that you have an equal chance of winning whether or not you order the offered merchandise.

The Direct Marketing Association, the US Postal Inspection Service, and Call for Action, Inc. have prepared this booklet for you to use as a guide when responding to sweepstakes offers and for recognizing the difference between legitimate sweepstakes and other types of offers, such as prize promotions, and illegitimate promotions that misrepresent themselves and seek to defraud.

INCREASED CONSUMER PROTECTIONS

The Deceptive Mail Prevention and Enforcement Act became law on December 12, 1999, and went into effect April 12, 2000. The law granted increased powers to the US Postal Service to better protect consumers against those who use deceptive mailings featuring games of chance, sweepstakes, skill contests, and facsimile checks. The law applies to sweepstakes sent through the US Mail®, not to sweepstakes conducted via the Internet or telephone, unless the mail is involved in some way.

According to the Deceptive Mail Prevention and Enforcement Act, required disclosures must be “clearly and conspicuously displayed,” that is, “readily noticeable, readable and understandable” by the target audience. The law strictly prohibits these false representations in sweepstakes promotions:

- That the recipient is a winner, unless that person has actually won a prize;
- That the recipient must order to enter;
- That an entry must be sent in with payment for a previous purchase;
- That the recipient must make a purchase in order to receive future sweepstakes mailings;

- A fake check, if it does not include a statement on it that it is non-negotiable and has no cash value;
- Any seal, name, or term that implies a federal government connection, approval or endorsement.

In addition, consumers have the right to stop receiving sweepstakes mailings—and the process is spelled out—sweepstakes promoters must give consumers a reasonable way to request name removal, and marketers must maintain a record of all “stop mail” requests and be able to suppress these names for 5 years. The requests must come in writing and can come from the individual personally or from an individual’s guardian or conservator. Consumers have a private right of action to sue in small claims court for failure to remove their names from sweepstakes mailing lists.

The US Postal Service can stop mailings from being delivered, and marketers are subject to substantial penalties for noncompliance with the law, including the failure to set up a reasonable system to prevent unwanted mailings.

- What is a sweepstakes?
- What is a lottery?
- What is a skill contest?
- What is a premium offer?
- More about sweepstakes.
- No purchase necessary – it’s the law!
- Be smart – read the rules.
- We have a winner!
- Consumer’s checklist.
- Where can I turn for help?

What is a sweepstakes?

By definition, a sweepstakes is an advertising or promotional device by which items of value (prizes) are awarded to participating consumers by chance, with no purchase or “entry fee” required in order to win.

What is a lottery?

A lottery, in contrast to a sweepstakes, is a promotional device by which items of value are awarded to members of the public by chance, but which requires some form of payment to participate. Lotteries are illegal except when conducted by states and certain exempt charitable organizations. If you believe you have received a solicitation in the guise of a sweepstakes which is an illegal lottery, you should contact your local post office or state Attorney General's consumer protection office.

What is a skill contest?

Don't confuse skill contests with sweepstakes offers. In a skill contest, the winner is determined by skill – not chance – and an entry fee or purchase may be required. There are many legitimate skill contests. For example, in a skill contest, you may write a winning jingle, solve puzzles, or answer questions correctly. Your skill or knowledge is what wins the contest, not chance. Know how the contest works, what the prizes are, and what all the fees are before paying anything to the company.

What is a premium offer?

Premiums are gifts that companies make available to all recipients who respond according to the companies' instructions, for example, a travel bag being received with a new magazine subscription. Under those circumstances, when everyone who responds to the offer receives the same gift item, without any element of chance, the offer is not a sweepstakes.

More about sweepstakes.

Consumers often ask how companies can afford such substantial prizes. Because sweepstakes are so successful in generating attention to their offers, substantial revenues are gained for the companies that sponsor them. Thousands of corporations give out millions of dollars yearly to lucky customers.

Your chances of winning will vary with the number of people who participate in a particular sweepstakes and the number of prizes offered. You should realize, of course, that the chance of winning a large prize is generally quite small. In most cases, you can enter as often as you

receive sweepstakes entries, and some companies will accept write-in entries on a postcard as well. Check the official rules to be sure. But, remember, there is no chance to win unless you enter!

Advertised prizes should be awarded unless otherwise stated in the rules. Check the official rules to see if all prizes are guaranteed to be awarded. Most sponsors will provide a list of all prize winners if you are interested in receiving this information.

No purchase necessary — *it's the law!*

You never have to order or pay a fee to enter and win a sweepstakes. You always have an equal chance of winning whether or not you order – it's the law.

Why are separate “yes” and “no” response envelopes used? Such envelopes are provided to help the sponsor to fulfill orders promptly to insure customer satisfaction. The “no” responses receive equal treatment in the sweepstakes but do not require order processing.

Be smart — read the rules.

Rules, and the way they are written, can tell you all about sweepstakes promotions and the companies sponsoring them. Read them carefully! Your entry can be discarded if the rules are not followed to the letter. If you can't find, read or understand the rules, you may want to think twice about entering.

The following information should be set forth clearly in the rules: “No purchase of the advertising product or service is required in order to win a prize.”

- No purchase of the advertised product or service is required in order to win a prize, and a purchase will not improve the chances of winning. (These disclosures must appear in the mailing and on the entry form, in addition to being in the rules.)
- All terms and conditions of the sweepstakes promotion, including entry procedures and eligibility requirements, if any.
- If applicable, disclosure that a facsimile of the entry blank or promotional device may be used to enter the sweepstakes.
- The termination date for eligibility in the sweepstakes. The termination date should specify whether it is a date of mailing or receipt of entry deadline.

- The number, retail value (of non-cash prizes), and complete description of all prizes offered, and whether cash may be awarded instead of merchandise. If a cash prize is to be awarded by installment payments, that fact should be clearly disclosed, along with the nature and timing of the payments.
 - The estimated odds of each prize. (If the odds depend upon the number of entries, the stated odds should be based on an estimate of the number of entries.)
 - The method by which winners will be selected.
 - The geographic area covered by the sweepstakes, and those areas in which the offer is void.
 - A name and business address where the sponsor can be contacted. Approximate dates when winners will be selected and notified.
 - Publicity rights regarding the use of the winner's name.
 - Mailing address provided to allow consumers to request a list of winners of prizes over \$25 in value.
 - An address or toll-free number where a recipient or caregiver may request a name to be removed from the sponsor's mailing list.
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We have a winner!

Winner selection in a sweepstakes is conducted in an unbiased manner which gives all the entries – both those with and without an order – an equal chance to win. This is usually done either by a random drawing or by a pre-selected number.

In a random drawing, entries are either picked manually by specially trained judges, or by a computer using random selection programs.

In a pre-selected number sweepstakes, a number is picked at random by an independent third party before the sweepstakes mailings are sent to consumers. The winning number is kept secret from the sponsor until the end of the promotion. Each pre-selected winning number corresponds to a specific prize. Because the winner is pre-selected in this way, such a sweepstakes can truthfully state: "You may have already won."

Throughout the life of the promotion, numbers from the participating universe are randomly assigned to entries and a record is kept of the numbers returned. At the end of the giveaway, the winning number is revealed to the sponsor and the number appearing on each response ("yes" or "no") is compared to the winning number. If the consumer who received the winning numbered entry did not respond, then the sponsor may award the prize to someone else who entered.

Consumers' checklist

Asking yourself the following questions, along with a good dose of common sense, should help you in evaluating sweepstakes or other promotions.

Are the rules and entry instructions for the promotion easy to find and understand?

If you can't understand what you must do to be eligible, think twice about responding. Make sure you understand the difference between an order for a product or service and a sweepstakes entry without an order.

Does the advertising copy state that no purchase is necessary in order to win?

Remember, by law, no purchase is necessary in order to enter a sweepstakes, and the chances of winning are the same whether you order or not.

Are the prizes worth winning?

Make sure the prizes you are trying for are desirable and worth the effort. Do you really want to win them? Is there a cash option?

Is the grand prize awarded to only one winner, or is it a shared prize among many entrants?

Because of the expenses associated with sponsoring a sweepstakes, some companies conduct what is known as a "pooled" sweepstakes. In other words, one grand prize is shared by all consumers who enter the sweepstakes. Shared sweepstakes may still be worth entering, but read the rules to avoid disappointment. The shared prize can be sometimes as little as a few cents.

What are your chances of winning one of the major prizes?

If you have the winning entry and respond, you will get the prize. However, it pays to check the small print of the offer you receive. If the odds of "winning" a particular prize or award are "1:1" that means that everyone who responds will get that award, which is an inexpensive item, not the more valuable prize. Remember, many people participate but there may be only one top prize. Also remember, ordering will not improve your chance of winning.

What is the postmark on the mailing you received?

If you receive a notice that you have definitely won a prize, think before you respond and check the postmark on the envelope or postcard. Bulk rate mailings, noted by a postal permit number, are sent to thousands of consumers. Logically, thousands of consumers could not all be major award winners. If there is a bulk rate postmark, you most likely won an award of nominal value, not a prize of substantial value. Deceptive mail sometimes arrives by First-Class Mail[®] also, so every promotion needs to be evaluated carefully.

Is this a sweepstakes or another type of offer?

Premium promotions (also known as prize promotions) are often confused with sweepstakes. If there is a disclosure such as “This is not a sweepstakes,” make sure you fully understand what the prizes really are, what the odds are, and what’s required before participating.

Some examples of offers which can be confused with sweepstakes include postcard and other mailings that congratulate you as a recipient of a valuable prize or award such as cash, a car, or a glamorous vacation. Such promotions may have 900 numbers to call to learn what “prize” or “award” you have won, though the rules state you may request this information by mail instead.

Remember that calling 900 numbers costs money. Find out the charge to your telephone bill before calling a 900 number. If you are interested in participating, but do not want to pay for the call, use the free mail-in option. Calling will not improve your chances of winning.

If you receive a promotion congratulating you on winning a prize, but requiring a shipping and handling fee, or a fee of any kind, it is not a sweepstakes and may be fraudulent. You should never have to pay any fee in order to receive a prize in a sweepstakes.

If the prize promotion mailing announces or implies that you have won a prize of major value, that is almost never the case. If a prize is won, it most likely is of lower value, not the highest value represented in large print.

For example, consumers respond to dream vacation offers but may find out that the processing fee is actually greater than the value of the prize. Others, upon responding to an offer, quickly learn they have to purchase goods, such as vitamins, water purifiers, security systems, or the like, in order to qualify for the prize. Products in such cases are sometimes sold at inflated prices and the prizes may be misrepresented. Jewelry values, for instance, are sometimes grossly overstated -- or savings coupons may only allow you to receive discounts from merchandise bought from the prize promotion sponsor itself. These offers may constitute violations of the federal mail fraud statute. Beware of these schemes and report them to your local postmaster or the nearest postal inspector.

If there is a disclosure such as “This is a sales incentive offer,” do you have to drive somewhere or pay a shipping or delivery fee to get the “award” which may be held out to be a prize? Sweepstakes-like promotions are often used by time-share resorts to encourage consumers to visit the resort. Read the rules carefully to see what your obligations are in order to receive the “award.” Special age and salary restrictions usually apply in such promotions. Further, a redemption fee may be required before you claim your “award.” Make sure you fully understand the offer before deciding to participate.

Who is the sponsor of the mailing you received? If the company's name seems familiar, are you sure that it is that company?

Disreputable companies sometimes use a variation of a nationally recognized name. Such promotions are often characterized by shipping and handling charges. Generally, the prize you receive, if any, from one of those sound-alike operators will not live up to your expectations.

Also be wary of companies that claim to represent a known sweepstakes sponsor, especially if they request a fee such as a "refundable deposit" for their services or "pre-payment of taxes." Chances are they're not who they claim to be. Call the sweepstakes sponsor directly to verify. Remember, taxes should only be paid directly to the Internal Revenue Service.

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Where can I turn for help?

To verify the reputation of any sweepstakes or other promotion received before responding, call the Better Business Bureau where the company is located, or your state or local consumer protection office. Be aware, however, that many questionable prize promotion companies do not stay in one place long enough to establish a track record -- an absence of complaints does not necessarily mean the offer is legitimate.

If you have a problem with a sweepstakes or prize promotion after participating, first contact the company sponsoring the promotion. If you are not satisfied, you can ask the following organizations for assistance:

The US Postal Inspection Service: should be contacted if you think you may have been victimized by a fraudulent promotional offer. You can contact them at the following address, or check the government pages of your telephone book:

US POSTAL INSPECTION SERVICE
OPERATIONS SUPPORT GROUP
222 S RIVERSIDE PLAZA, SUITE 1250
CHICAGO, IL 60606-6100
800.372.8347
<http://postalinspectors.uspis.gov/>

The Federal Trade Commission: provides information to help consumers spot and avoid fraudulent practices in the market place, and can be contacted at the following:

FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVE NW
WASHINGTON, DC 20580-0001
877.FTC.HELP
www.ftc.gov

Your state Attorney General: or local office of consumer protection, listed in the government pages of your telephone book.

The Better Business Bureau: where the company is located.

<http://www.bbb.org/>

National Fraud Information Center (NFIC): a project of the National Consumers League, which helps consumers with information, referral services, and assistance in filing complaints.

NATIONAL FRAUD INFORMATION CENTER

800.876.7060

www.fraud.org

Call for Action: the international nonprofit network of hotlines working in partnership with radio and television stations, resolves consumer problems through free and confidential mediation.

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