

Facebook Contests – There's an App for That; Be Aware of Facebook's Promotions Guidelines When Running Online Contests

May 2012

Contests have long been a popular means by which broadcast radio and television stations interact with their audiences. Today, contests are conducted not only over the air, but also online. In particular, broadcasters “like” to run contests on Facebook. Facebook contests commonly follow a similar pattern. A station will invite its listeners or viewers to participate in a contest by “liking” the station's page. To like a page, all a listener or viewer has to do is click the “thumbs-up” Like button. Upon doing so, that individual becomes a “fan” of the page and can access content not available to non-fans.

We have previously discussed the Federal Communications Commission's (FCC's) broadcast contest rules and their applicability to online contests. In addition to the FCC's rules, however, broadcasters should also be aware of Facebook's “Pages Terms.” These Terms apply broadly to “promotions” (including “contests” and “sweepstakes”) and prescribe the manner in which promotions may be run on Facebook.

First, the Terms make clear that contests “must be administered within apps on Facebook.com, either on a Canvas Page or a Page App.” In other words, a station cannot run a contest on its wall. Instead, it must use an app (available from Facebook or a third party) to administer the contest. Relatedly, the Terms state that winners cannot be notified via Facebook. Thus, a station should notify winners via email, telephone or some other non-Facebook means rather than announcing contest winners on its wall.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Next, the Terms state that a contest's rules must make clear that "the promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook." In addition, the contest's rules should specify that when an individual enters or participates in a contest, he or she is providing entry information to the station or third party running the contest, not Facebook. Finally, the Terms require contests to include "a complete release of Facebook by each entrant or participant."

The Terms then provide that "You must not use Facebook features or functionality as a promotion's registration or entry mechanism. For example, the act of liking a Page or checking in to a Place cannot automatically register or enter a promotion participant." In other words, merely hitting the Like button cannot automatically enter a fan in a contest. There must be another step, such as filling out an entry form. Similarly, the Terms provide that the Like button cannot be used as a voting mechanism. Thus, if you invite your fans to vote on contest entries, they must do so via an app rather than clicking the Like button to vote.

Perhaps most confusingly, the Terms also state that "You must not condition registration or entry upon the user taking any action using any Facebook features or functionality other than liking a Page, checking in to a Place, or connecting to your app." Stated inversely, stations may condition entry upon liking a page--so-called "like-gating." Thus, a station may require an individual to click the Like button and become a fan in order to reveal hidden content, such as a contest's entry form. Although the initial like cannot automatically enter the fan in a contest, it can reveal a form that the fan has to submit in order to enter.

Note, however, that although Facebook's guidelines allow like-gating, stations should exercise caution. In a recent decision, the Better Business Bureau's National Advertising Division (NAD) evaluated a promotion administered by a contact lens company that a rival company claimed was false and misleading. The promotion at issue invited fans to "Like this page! ... So you can get your free pair of glasses!" Although it appeared that a fan could win a free pair of glasses simply by liking the page, other terms and conditions applied. The fan could only view those additional terms, however, after clicking the Like button. The NAD recommended making the terms and conditions available up front in future advertising. Addressing the competitor's claim, the NAD explained that the display of the total number of likes on the company's Facebook page was not false and misleading. Rather, it constituted "general social endorsement" and could mean a number of things to consumers, including that consumers like the company or the company's product. The NAD cautioned, however, that its decision could have been different if it was demonstrated that the company used misleading or artificial means to inflate the number of Facebook likes or if consumers who participated in the like-gated promotion could not receive the benefit of the offer.