

Duff on Hospitality Law

## 2011 Hospitality Law Conference Highlight: Contests and Sweepstakes

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Greetings from an unusually cold Houston, location of the 2011 Hospitality Law Conference, sponsored by [HospitalityLawyer.com](http://HospitalityLawyer.com). I attended a number of interesting sessions over the course of two and a half days including the one that is the topic of this post: legal concerns that arise with holding contests and sweepstakes that result in the award of prizes.

No doubt you've seen advertising for these kinds of promotions: "Submit your favorite photo of a stay at our hotel and win a free night!" "Leave your business card for our monthly drawing and win a chef's menu dinner with wine pairings for 2!" "After your cucumber eye treatment, enter your name for a chance to win a shiatsu massage with reflexology finisher!" Contests and sweepstakes are immensely popular marketing tools throughout all retail markets, including hospitality. I myself have shed business cards all over Seattle, chasing dreams of chic meals taken at funky, retro hotels (with free wi-fi). Contests and sweepstakes can be as simple as dropping a card in a fishbowl or as complicated as shooting, editing and submitting a polished six-minute animation short to be judged in a "contest of skill."

A word on terminology: the speakers defined a sweepstakes as a promotion in which prizes are awarded by chance versus a contest (or contest of skill) in which entrants must perform an action—answer a trivia question, write an essay, paint a picture—in order to be judged for a prize. Prizes in contests are based on skill and not luck.

The primary focus of the session yesterday was the importance of making sure all sweepstakes and contests stay on the right side of the line that separates a fun and useful marketing tool from an un-fun, illegal gambling operation (lottery). Every state regulates gambling, games of chance, lotteries—in short, if you aren't the government, or aren't licensed by the government, don't run a lottery.

My fellow hospitality lawyers provided a simple strategy to help determine whether that drawing for a night with your favorite chef is a great sweepstakes idea or an unlicensed, illegal lottery. There are three basic elements that must all be present to have a lottery, so to help avoid being considered as such, make sure your promotion contains, at most, two of the following:

- Consideration (“pay-to-play”/“pay to win”—i.e. entrants must pay something in order to enter the promotion or to win it or to increase their chances of winning it)
- Chance
- Prize (including non-monetary prizes, like “get your picture on our website as our Favorite Monthly Customer!”)

So for a sweepstakes, eliminate the consideration and make the sweepstakes available for free—that is, “NO PURCHASE NECESSARY TO ENTER OR WIN.” You can charge an entrance fee for a contest of skill, but, the speakers emphasized, it’s important to be sure the judging criteria are objective, fair and equally applied. If you are not judging the contest, the qualification of your judges may be an issue. And, as with everything in advertising and marketing, disclose, disclose, disclose. Make sure potential entrants understand the rules and restrictions so you can just sit back, relax and watch your business grow.

**Tags:** advertising, contests, hlc, hospitality law conference, marketing, promotions, sweepstakes