

PROMOTION MARKETING ASSOCIATION OF AMERICA

Sweepstakes and promotions in Mexico

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I. INTRODUCTION.

In Mexico sweepstakes and promotions are regulated by the Federal Gaming and Sweepstakes Law ("FGSL"), the Regulations of the Federal Gaming and Sweepstakes Law ("RFGSL"), official standard NOM-028-SCFI-2000 (the "Standard"), and the Federal Consumers' Protection Law ("FCPL") and its regulations.

1. There are six types of sweepstakes pursuant to the RFGSL:

- 1.1. Sweepstakes where tickets are sold.
- 1.2. Sweepstakes with free tickets. Through the purchase of goods a ticket to participate is obtained.
- 1.3. Instant winner sweepstakes. Tickets are offered with a hidden number or symbol that allow the participant to know if he has won after scratching or withdrawing part of the ticket.
- 1.4. Sweepstakes in financing programs.
- 1.5. Sweepstakes of symbols or numbers.
- 1.6. Sweepstakes transmitted through massive means of communication.

2. There are two proceedings to obtain a permit:

2.1 Ordinary proceeding.

A writ has to be filed with at least thirty (30) business days prior to the date in which the promotion is expected to begin. A resolution is issued within ten (10) business days after the filing is made. If no reply is obtained the request is deemed to have been denied.

2.2 Simplified proceeding.

It is necessary to obtain an appointment with at least fifteen (15) prior to the date in which the promotion is expected to begin. A resolution is issued within ten (10) business days after the filing is made. If no reply is obtained the request is deemed to have been denied.

Once the permit is obtained and if the drawing is going to be held within Mexico the presence of an official from the Ministry of Interior is always required during the drawing, even though the drawing may be conducted by anybody. It is also important to consider when making a sweepstakes or promotion that the unclaimed prizes will have to be delivered by the promoter to the Ministry of Interior, for beneficial and pro bono purposes. In both cases the following information will have to be submitted:

1. Value of the prizes in Mexican pesos.
2. Mechanics used to select the winners.
3. Term provided to the participants to claim prizes.
4. Time and date in which the prizes will be awarded within the Mexican Republic if there are any winners within Mexico.

Unless all of the above mentioned requirements have been met, no sweepstakes and/or promotion nor any advertising related thereto may be held.

In general, in addition to the foregoing requirements, it is always necessary to submit prior to the making of any such sweepstakes and promotions: (i) a writ with all the information concerning the terms and conditions of the same; (ii) description of the prizes that will be granted to the winners; (iii) general information about the promoter; (iv) all rules and advertising of sweepstakes and promotions shall be in Spanish, and abbreviated rules are forbidden; (v) although there are no restrictions on the type or nature of the prizes that may be awarded, the advertised value of the prizes may not be higher than their retail price; (vi) the Ministry of Interior always requires the placing of a bond, issued by a Mexican Bonding Company in an amount equal to the total retail value of the prizes when the sweepstakes and/or promotions take place within

Mexico, (vii) the computerized selection of winners is only permitted if the authorities have: (y) a list of the participants and they have verified that it is true and correct; and (z) a description of the software used for selecting the winners; (viii) Promoters shall publish the list of winners once in two domestic news papers, and (ix) agree to deliver prizes won by Mexican residents at a domicile within Mexico.

II. APPLICABLE LAWS.

A. Federal Gaming and Sweepstakes Law.

Sweepstakes are regulated by the Federal Gaming and Sweepstakes Law ("FGSL") as indicated by its name, the FGSL is federal in nature, i.e, there are no local or state laws or regulations that regulate the making of sweepstakes and promotions in Mexico.

The FGSL was enacted on December 30, 1947 and has not been amended as of today, although various proposals have been submitted before Congress.

The FGSL forbids in general gaming with wagers and games of chance. Among the games that are allowed are the following: chess, checkers, domino, dice, bowling, billiards, ball games, races of individuals, vehicles, animals and in general all types of sports events and sweepstakes. All other games are deemed to be forbidden.

The FGSL establishes that in order to make sweepstakes or drawings a permit from the Ministry of Interior will be required.

If sweepstakes are performed without a prior authorization, the Ministry may order the closure of the premises in addition to any other applicable penalty.

Sweepstakes shall not be performed at premises located near schools or work centers.

The following are the penalties provided under the FGSL:

I. Three months to three years of imprisonment and a fine equivalent to \$500.00 to \$10,000.00 pesos and the removal from their position to:

I.I. Managers, entrepreneurs, directors, employees and agents of sweepstakes that have not obtained a legal authorization. Raffles between relatives and friends are not included;

I.II. Owners, organizers, managers or directors of the premises where forbidden games or games with wagers take place without the authorization of the Ministry;

I.III. Those who participate in the sale or distribution of tickets for the participation in lotteries or games with wagers that are performed abroad;

I.IV.- Government employees and officials who authorize, protect, or assist to premises where forbidden games are performed, provided that in the latter event their assistance is not in the compliance and discharge of their positions.

II. Imprisonment from one month to two years and a fine of \$100.00 to \$5,000.00 pesos to:

II.I.- Those who knowingly lease premises for the performance of forbidden games, games with wagers or sweepstakes without a permit from the Ministry of Interior;

II.II. Players or spectators who assist to premises where illegal games are played.

In addition to the abovementioned penalties, the Ministry of Interior may seize all the items, machinery, goods, assets, prizes and money related with the unauthorized game or sweepstakes. In addition, the Ministry of Interior may order the dissolution of the company who committed the crime. Infringements to the FGSL that are not considered as crimes will be penalized by the Ministry of Interior with fines that range from \$100.00 to \$10,000.00 pesos or arrest up to fifteen (15) days. In addition, the permit of the infringing party may be revoked and his premises closed if the infringement is material or there is recidivism. When the infringement is committed by the players, arbitrators, or any other individual who is rendering services at the premises where the games or sweepstakes is taking place, such individual may be removed from his position for a year or in a final manner.

B.Regulations of the Federal Gaming and Sweepstakes Law.

The RFGSL were published on September 17, 2004, its purpose is to regulate the authorization, control, surveillance and inspection (scrutiny) of games with wagers, sweepstakes/raffles/drawings in any of its modalities, with the exception of the drawings organized by the Mexican Lotto (Lotería Nacional para la Asistencia Pública).

The RFGSL define, among other the following terms: Wager, Beneficiary, Ticket, Concentration, Promoter, Establishment, Live Shows, Shows, Inspectors, Books, and others related with gaming and sweepstakes.

The RFGSL establish that the premises wherein games, raffles, sweepstakes and any other game of chance with a wager take place, without the prior approval of the Ministry of the Interior (MI), will be subject to immediate closure. However, no permit shall be required from the MI in the event gaming is held at private domiciles, provided they are not held on a regular basis and as long as the persons allowed, are relatives or have a social relationship with the owner (s) of the place where the meeting is being held.

The RFGSL provide that slot machines are banned and will not be authorized for any reason whatsoever in any of their forms.

A Gaming Commission has been formed in terms of the RFGSL with the purpose of assisting the MI in the compliance and application of the law and its regulations.

Individuals directly or indirectly involved in the organization of sweepstakes, including those involved in the issuance of the tickets and/or in the general performance of the sweepstakes may not participate in the same.

The RFGSL establish the following categories of sweepstakes:

1. Sweepstakes with the sale of tickets;
2. Sweepstakes without the sale of tickets;
3. Instant winner sweepstakes (scratch and win);
4. Sweepstakes related with commercialization systems;
5. Sweepstakes of symbols and/numbers; and
6. Sweepstakes that are broadcasted through massive means of communication.

Some of the requirements for the issuance of an authorization for the legal performance of sweepstakes are as follows:

1. Use of the format provided by the MI;
2. Name and domicile of the applicant;
3. Copy of the tax-payers identification number of the applicant;
4. Address in which the drawing/raffle will take place;
5. Detailed explanation of the mechanics of the sweepstakes;
6. Value of the prizes, as well as the number and price of all the tickets issued;
7. The geographical area that will be covered with the sweepstakes;
8. Legend that establishes that any person may have access to the premises in which the drawing will take place;

9. The means of communication where the results shall be published, including the publication date; and the means of communications that shall be used by the organizer in order to publicize and promote the sweepstakes.

10. Certified copies or originals of the articles of incorporation of the applicant if a body corporate and original or certified copy of the power of attorney of its attorney in fact.

11. Exhibit a bond in order to guarantee payment of the prizes.

The winning tickets may be determined pursuant to one of the following methods:

1. Raffle/drawing;
2. Number allocation;
3. In accordance with the results of the Mexican Lotto; and
4. By using special software that will have to be previously authorized by the MI. (The MI has specialized and pre-approved software available for the promoters)

It is important to bear in mind that no sweepstakes shall be authorized when the same promote the consumption of any of the following products:

1. Tobacco;
2. Alcoholic beverages;
3. Medicines or Products that may attempt against the health of the persons in terms of the Mexican Health Law.

In the sweepstakes organized through the Internet and/or through call centers it is necessary to grant to the participants a number. Participants shall, in both cases, have access through the internet to consult and print their participation number as well as the terms and conditions of the sweepstakes.

No-purchase-necessary sweepstakes may be organized by body corporates, provided that the organizer promotes the goods or services related to its company. It is also necessary to disclose to the MI the number of tickets that shall be distributed and the term during which the distribution will take place.

Instant winning sweepstakes are also regulated under the RFGSL. There are two main requirements in order to organize these kinds of sweepstakes:

1. Name, domicile and telephone of the authorized representatives where the prizes may be redeemed in those cases in which the distributors may not pay the prize because of the high amount of the same; and
2. Comply with the requirements that in general and from time to time the MI issues.

TV shows involving sweepstakes (game shows) and other similar shows where prizes are offered and delivered and where game of chance are involved and broadcasted through massive means, may be held as long as the promoters obtain the prior authorization from the MI along with the authorization from the General Direction of TV, Radio and Cinematography.

Certain guidelines regarding unsold, lost or stolen tickets are provided in the RFGSL. In general, the prizes awarded to the above mentioned tickets shall be re-entered for another winner bearing a valid ticket in the understanding that the promoter will try to withdraw such tickets prior to the drawing.

The name of the winner will have to be written in the winning tickets.

In order for winning tickets to be valid they shall:

1. Lack any scratch or visible signs of alteration that may generate doubt regarding the authenticity of the ticket; and
2. Contain the correct data of the participant.

The RFGSL establish severe fines to the infringers that depend in the seriousness and duration of the infringement(s). Penalties include fines, arrest, suspension of operations, revocation of the permit and closure of the premises.

C. Federal Consumer's Protection Law.

The Federal Consumer's Protection Law ("FCPL") is also federal in nature and was enacted on December 22, 1975. The FCPL provisions may not be waived and no usage, commercial practices or agreements may be argued against its compliance. The purpose of this law is to promote and protect consumer's rights, equity and legal security to the relationships between suppliers and consumers. The rights provided by the FCPL do not exclude other rights deriving from: (i) international treaties or agreements of which Mexico is a signatory; (ii) applicable laws and regulations issued by the competent administrative authorities; and (iii) customs, analogy and equity.

The FCPL establishes that sweepstakes shall be subject to the following rules:

- 1.- All advertising and publicity shall contain the terms and conditions of the sweepstakes, their duration and amount of goods offered, if neither the duration nor the amount of goods are included, they shall be deemed to be indefinite;
- 2.- No sweepstakes may be performed in which the value of the prizes is advertised as notoriously higher than their retail price;
- 3.- If the promoter of the sweepstakes does not comply with the offering made, the consumer may at his option: (i) demand compliance; (ii) accept an equivalent good or service or (iii) rescind the existing relation or contract; in addition he shall be entitled to recover losses and damages.

In the event of promotions that are made with the purpose of increasing the sales of a product, in general, no permit or authorization is required except when the corresponding laws and standards establish otherwise. The above mentioned standards are published in the Official Gazette by the Ministry of Commerce.

The statute of limitations for the rights and obligations set forth in the FCPL is in general of one (1) year, except for other statute of limitations provided under the FCPL.

Infringements to the FCPL may be penalized with fines that range from one to one thousand and five hundred times the minimum general wage in effect for the Distrito Federal. If the infringement is material the corresponding premises may be subject to closure.

D. Mexican Official Standard NOM-028-SCFI-2007 (the "Standard").

The Standard establishes the characteristics of the commercial information that shall be provided by those who perform collectible promotions and promotions that involve an element of chance through sweepstakes or contests. The Standard is applicable to all individuals or entities that perform within Mexico collectible promotions or promotions through contests or sweepstakes.

Any promoters that intend to perform a collectible promotion or a promotion through contests or sweepstakes shall provide to the consumers the following information:

- a) Name and domicile of the person performing the promotion;
- b) Goods or services that are the object of the promotion;
- c) Incentive offered in the promotion;
- d) Term of the promotion (date of initiation and date of termination) Description of the goods or services offered in the promotion, indication the total number of prizes (incentives) that will be granted (if the amount is not indicated it is deemed to be unlimited);
- e) Places where the promotion will be held (indicating whether it is local, regional or national);

f) If applicable restrictions to the consumers regarding the maximum amount that may be purchased. If no amount is stated it is deemed to be unlimited.

g) Guarantees offered on the incentives.

h) Whether the incentive is granted gratuitously or the amount that has to be paid in order to obtain it;

i) Procedure to perform the exchange to obtain the prize (incentive);

j) Places where the exchange can be made regardless of the systems or mechanisms which are more convenient for the promoter to provide the information;

k) In the event there is an element of chance, the corresponding permit from the Ministry of Interior (number of the permit granted by the Ministry, number of tickets issued, total number of prizes, mechanics of the drawing and, if applicable place and date where it will take place, means of communication and dates where the results will be advertised, term to collect the prizes, time and place to collect the prizes, telephone numbers for information).

It is expressly indicated by the Standard that whenever a promotion involves an element of chance the promoter shall obtain the corresponding authorization from the Ministry of Interior in terms of the FGSL and its Regulations.

Promoters shall file a writ before the Federal Consumers' Protection Agency ("FCPA") at least three (3) business days prior to the initiation of the promotions that they intend to perform including a description of the mechanics.

In the event that a promoter intends to modify the terms of a promotion it shall previously notify the Ministry of Interior, when applicable, and the FCPA at least one (1) business day prior to the date when the changes are made. Any and all changes to the terms and conditions of the promotions shall be notified in the packaging, labels, coupons, informative material, and massive means of communication.

Any violation or breach to the provisions of the Standard shall be penalized by the FCPA in the terms of the FCPL and by the Ministry of Interior in the terms of the FGSL.

III. COMPETENT AUTHORITIES.

A. Enforcement of the FGSL.

In terms of the FGSL, the Executive branch, through the Ministry of Interior is the authority in charge of the regulation, authorization, control and surveillance of gaming when any type of wager is involved, as well as for all types of sweepstakes and promotions, except for those performed by the National Lottery which is an agency regulated by its own law. The enforcement and surveillance of gaming, promotions and sweepstakes is performed through official inspectors although the Ministry of Interior is empowered to create agencies or commissions that will function in terms of the regulations of the FGSL.

The Ministry of Interior will establish the requirements and conditions that have to be met for each event and will include in each permit the percentage or participation that corresponds to the Federal government deriving from the proceeds obtained by the permit holders; such percentage or participation will be used for the improvement of community and health care centers. The foregoing, in addition to the corresponding taxes that may be established by fiscal laws and regulations for these purposes.

The abovementioned percentage or participation is not required in the following events:

- I. Sweepstakes or promotions organized by the authorities, educational or pro-bono organizations the product of which is used for public interest purposes;

- II.- Sweepstakes or promotions organized exclusively for commercial propaganda purposes;
- III.- Sweepstakes or promotions organized as part of a sales system in which the participants receive the full value of their contributions in merchandise and other goods.

Federal Courts are competent to apply and enforce the penalties established under the FGSL.

B. Enforcement of the FCPL.

In terms of the FCPL, the FCPA is in charge of the promotion and protection of consumers' rights and interests. Although the FCPA is domiciled in Mexico City, it may establish offices all over the country.

Federal courts are competent to solve any controversies in which the FCPA is a party.

The FCPA is vested, among others, with the following authority:

- 1.- Promote and protect consumers' rights;
- 2.- Represent consumers' interests through the initiation and/or filing of actions, remedies and other applicable proceedings;
- 3.- 3. Represent consumers' individually or as a group before courts and administrative authorities as well as before suppliers;
- 4.-Obtain, process and publish objective information to facilitate consumers' knowledge of goods, products and services offered in the market;
- 5.-Enforce compliance with standards;
- 6.- Apply the penalties established under the FCPL.

IV. CONCLUSIONS

- 1.- In Mexico, pursuant to the RFGSL sweepstakes may be held with purchase methods, no purchase entry methods, standard instant win and collectible promotions.
- 2.- All rules and advertising of sweepstakes and promotions shall be in Spanish, and abbreviated rules are forbidden.
- 3.- 3. Although there are no restrictions on the type or nature of the prizes that may be awarded, the advertised value of the prizes may not be higher than their retail price.
- 4.- Winners have to pay taxes on their prizes.
- 5.- The computerized selection of winners is only permitted if the authorities have: (i) a list of the participants and they have verified that it is true and correct; and (ii) a description of the software used for selecting the winners.
- 6.- 6. Promoters shall publish the list of winners on the dates and means of communication approved by the Ministry of Interior.
- 7.- The Federal Copyright law provides protection to certain promotions, (article 173 paragraph V).
- 8.- 8. It is always important to verify that the promoter is the registered owner or the authorized licensee of the trademarks, trade names and commercial slogans that will be used in the promotion/sweepstakes in order to prevent the infringement of third parties' rights.
- 9. Bonds have to be posted to cover the full value of the prizes to be awarded.
- 10. In the event the prizes include real estate, it is necessary to submit an appraisal of the properties, submit evidence that the construction is at least 75% advanced, attach the corresponding pictures and evidence that the properties are free from any liens or encumbrances.
- 11. In the event the prizes include trips it is necessary to include detailed information about the trip, the value of the same and establish the option that if the winner is unable to travel he may transfer the tickets or substitute the prize for money, or that it may not be transferred but exchanged for money or viceversa.
- 12.- In the event of sweepstakes through the internet or by telephone all the information regarding the authorization from

the Ministry of Interior will have to be included in the corresponding website where the terms and conditions are included plus additional legends.

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