

BE AWARE OF STATE LAWS GOVERNING CONTESTS AND PROMOTIONS

TO: TENNESSEE ASSOCIATION OF BROADCASTERS' MEMBERS
FROM: DOUGLAS R. PIERCE, ATTORNEY w/KING & BALLOW and
TAB GENERAL COUNSEL
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The FCC has recently announced it may revise its rules concerning station conducted contests. The proposed rule change indicates that broadcasters may no longer be required to announce the full contest rules in a broadcast, but may be allowed to post those rules on a publicly available website. This proposed change should be welcome news for broadcasters. Moreover, this modernization of the rules will benefit listeners and viewers because it will be easier for them to read, understand, and follow contest rules on an internet website instead of listening or seeing those rules quickly revealed in a broadcast.

Despite this rule modernization, the FCC will undoubtedly continue to penalize any broadcaster who conducts a misleading contest, or one that qualifies as an illegal lottery. Both federal and state laws generally prohibit advertising of lotteries, which include contests containing the three necessary elements of prize, chance, *and* consideration.

In addition to being subject to fines from the FCC because of misleading contests, Tennessee state law could also impose sanctions upon broadcasters for contests that are misleading or run afoul of specific Tennessee statutes. One particular statute of which broadcasters should be aware is the Tennessee Consumer Protection Act ("TCPA"). There are a number of provisions of the TCPA that would generally require broadcasters to not be deceptive or misleading about the prize offered in a contest. Those provisions generally prohibit deceptive

representations or designations of the geographic origin of a particular good or service; that such goods or services have the sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have; that the goods are original or new when they are not; or that the good or services are of a particular standard, quality, or grade that they do not have.

On rare occasions, some employees of broadcasters have engaged in contests they thought were “funny,” such as suggesting a prize of \$100,000 only to give the contest winner the candy bar called “100 Grand.” Not surprisingly, some contest winners of such deceptive practices failed to see the humor in this sort of contest, and they have sued broadcasters. The TCPA is significant in that it provides enhanced penalties for unfair or deceptive acts. For example, the TCPA provides that if someone prevails under that statute, they might recover three times their actual damages. Moreover, if you lose a TCPA claim, you will likely also have to pay the prevailing party’s attorneys’ fees. These enhanced sanctions encourage attorneys to pursue TCPA claims against any organization or person who has arguably violated the TCPA.

Another area of the TCPA presenting potential pitfalls for broadcasters can occur when broadcasters team up with other contest sponsors. For example, if a broadcaster promotes a contest where listeners go to a retailer or other business to complete a contest application, this is an area that the TCPA might regulate. Specifically, the TCPA says that if you lead someone to believe they, “may receive any prize as an inducement to. . . visit a business” there are specific restrictions on the running of that contest. Those restrictions include requirements to state: The approximate value of the prize; a statement of the odds of receiving the prize; and, the restrictions, qualifications, or other conditions necessary to receive the prize. Moreover, in this sort of contest, the TCPA prohibits making the receipt of the prize contingent upon the consent of the winner to allow his or her name to be used for promotional purposes.

To date, we have seen little use of the TCPA as a hammer against broadcasters in connection with contests and promotions. With potential rule changes at the federal level for contests, however, this increases the likelihood there will be an emphasis on state enforcement of any contest deemed to be misleading or deceptive. Additionally, the minimal application of the TCPA to broadcaster contests in the past may be because Tennessee broadcasters are consistently running “clean” contests and promotions. If, however, you are presented with any contest or promotion that seems questionable, or you have any concerns about your contest partners, it would be prudent to step back and consider whether the contest is safe under Tennessee law.

If you would like to make comments or suggestions regarding the proposed revisions of the FCC’s Contest Rules, please contact the TAB Office at 615-365-1840 in the next 30 days.