

ADVERTISING &

MARKETING

BULLETIN

*A Report on Recent
Developments in Advertising
& Marketing Law*

June 2003

MAKING YOUR CONTEST A WINNER!

Canadians love contests. Indeed, our national newspaper recently reported that “the contest industry is on a roll”.¹

The main federal laws governing contests are found in section 206 of the Criminal Code and section 74.06 of the *Competition Act*. Any advertising relating to contests must also comply with the misleading advertising provisions of the Act. As well, contests open to Quebec residents must comply with Quebec’s special laws on contests.

CONTESTS AND THE CRIMINAL CODE

The Code provisions on “illegal lotteries” were passed over a century ago to curb illicit gaming. Lawmakers at that time were concerned mainly with protecting Canadians from the evils associated with games such as 3-card monte (presumably played in the backrooms of saloons). They probably had no idea that these rules would one day be applied to regulate contests on boxes of cereal played by children over the breakfast table!

Section 206 of the Code prohibits the conduct of contests in which winners are determined solely by chance. However, subject to compliance with certain requirements, the Code contemplates the conduct of legal contests which determine winners by mixed chance and skill or by skill alone.

Since all aspects of the various combinations of elements must be present before a contest becomes an illegal lottery under the Code, there is some room for structuring a contest in a way that eliminates at least one of the aspects, thus making the contest legal.

If winners are to be determined based upon a game of mixed chance and skill, the contest is prohibited by the Code if the participants are required to pay money or give valuable consideration in order to participate. It is therefore prudent that an element of skill be introduced into the contest and that participants not be required to pay money or give valuable consideration for the right to participate unless the contest does not involve an element of chance.

Skill-Testing Question

The most common means of introducing an element of skill into a contest is the “skill-testing question” – usually, a time-limited arithmetical problem containing relatively simple addition, subtraction, multiplication and division.

No Purchase Requirement

Once an element of skill has been introduced into the contest, the sponsor should also ensure that entrants need not pay money or give valuable consideration for the right to play.

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¹ “Firm’s Marketing Departments are Big Winners in Contest Mania”, *The Globe & Mail*, May 24, 2003, B1.

CONTESTS AND THE COMPETITION ACT

Even if the contest is legal under the Code, the sponsor must also comply with the requirements for contests under the Competition Act.

The main point of section 74.06 of the Act is that there should be adequate and fair disclosure of such matters as the number and approximate value of prizes, the areas to which they relate (i.e. any regional allocation of prizes) and any fact within the knowledge of the advertiser that materially affects the chances of winning (such as the mechanics of the contest and the odds of winning).

Adequate and Fair Disclosure

Disclosure should be made in a reasonably conspicuous manner at a time before the potential entrant is inconvenienced in some way or committed to the contest or product/service being promoted by the contest.

Short List Disclosure

The Competition Bureau requires that sponsors provide adequate and fair disclosure by indicating a “short list” of rules either through the media or on the outside of the package, as the case may be. This short list should, at a minimum include:

- the number and approximate retail value of prizes;
- the regional allocation of prizes, if applicable;
- if within the knowledge of the advertiser, the chances of winning and any other fact that materially affects the chances of winning;
- the requirement to answer correctly a skill-testing question;
- the date on which the contest closes;
- that no purchase is necessary to enter the contest; and
- the place where the full contest rules are available.

Written Opinions

Since April 1, 2003 the Competition Bureau will, on payment of a fee of \$1,000, review contest materials and give a written opinion (binding on the Bureau) as to whether or not the contest provides the Commissioner with sufficient grounds to commence an inquiry. For simple contests, this opinion takes two weeks. For complex contests, this opinion takes six weeks.

CONTESTS IN QUEBEC

At present, Quebec is the only province to pass a statute applying specifically to contests. If the contest is to be run in Quebec, it will be necessary to satisfy the requirements of that province’s legislation on “publicity contests” administered by the Régie des alcools, des courses et des jeux.

Including Quebec residents will have several effects on a contest, including:

- all materials for Quebec residents must be in French;
- notice of the contest, together with the applicable duties, a copy of the contest rules and the text of any advertisement used in the contest must be filed in advance with the Régie;
- duties based on the value of prizes available to Quebec residents must be paid in advance;
- the contest rules must contain certain prescribed information; and
- in certain cases, a security bond with the Régie may be required.

The additional legal requirements for running contests in Quebec often lead contest sponsors to exclude residents of Quebec.

STAY TUNED

Now you know the basics. The special issues facing today’s contest sponsors (such as on-line contests, equal integrity and privacy law compliance) will be addressed in our next Bulletin.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

For further information, please contact your McMillan Binch LLP lawyer or one of the Practice Leaders of our Advertising & Marketing Group listed below:

Sharon E. Groom	416.865.7152	sharon.groom@mcmillanbinch.com
Bill Hearn	416.865.7240	bill.hearn@mcmillanbinch.com

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