

Facebook Issues New Guidelines For Running Promotions On Its Platform

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As Facebook continues to grow in popularity, more companies have started to run various types of sweepstakes, contests, and other promotions on the Facebook Platform. Whenever a company runs – or even advertises – a promotion on a third-party platform, such as Facebook, the company must not only ensure that the promotion complies with applicable laws, but also with the platform's terms and conditions. Up until recently, though, there hasn't been any clear guidance on what companies could or could not do on the Facebook Platform. That changed in November 2009 when Facebook issued a detailed set of Promotions Guidelines.¹

The Growth Of Facebook And Social Media

With over 350 million active users on Facebook,² it's no surprise that companies want to establish a presence on that platform. They can easily do this by creating a Facebook Page – the company version of an online profile – and inviting individual users to become “fans” of its Page. To date, Facebook Pages have signed up more than 5.3 billion fans³ and, on average, each Facebook user becomes a fan of two Pages each month.⁴ Therefore, by establishing a Facebook Page, companies looking to enter the social networking space can easily and instantly tap into a large and thriving online community.

Once companies have established a presence on Facebook or another social media platform, they want to give people a reason to keep visiting their pages. To do this, some companies have started to offer sweepstakes, contests, and other promotions on these pages. Although this strategy offers various benefits from a marketing perspective, it also raises some legal uncertainties because it's not always easy to determine what is and is not permissible on a particular social networking site. The terms of use that govern these sites rarely provide much clarity because they typically focus on the consumer-level user, not the company-level user.

Facebook's new Promotions Guidelines finally provide some direction about how companies can offer promotions on that platform. The benefit of these Guidelines is that they remove many of the uncertainties that companies have struggled with over the past few years. The downside, though, is that many companies are likely to find that the promotions that they have been running while the rules were ambiguous are now subject to various restrictions.

Important Definitions

Facebook's Promotions Guidelines apply to any “sweepstakes, contest, competition, or other similar offering.” The term “sweepstakes” refers to promotions in

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which winners are selected on the basis of chance, and the terms “contest” and “competition” both refer to promotions in which winners are selected on the basis of skill. The reference to a “similar offering” is more vague. From Facebook's perspective, the open-ended language is understandable, but it does leave some uncertainty for marketers as to whether certain types of advertising plans will fall under the definition of a “promotion.” Marketers should check with their legal counsel to determine whether the Guidelines are likely to apply.

The Guidelines draw an important distinction between “publicizing” and “administering” a promotion on Facebook. Publicizing a promotion on Facebook means “promoting, advertising, or referencing a promotion in any way on Facebook or using any part of the Facebook Platform.” This may include, for example, mentioning the promotion in Facebook advertising inventory, on a Facebook Page, or through a status update. In contrast, administering a promotion on Facebook means “operating any element of the promotion on Facebook or using any part of the Facebook Platform.” This may include, for example, collecting entries or submissions, conducting a drawing to select winners, judging entries to select winners, or notifying winners.

There are different requirements for publicizing and administering promotions on Facebook.

Requirements For Publicizing A Promotion On Facebook

Companies are not required to obtain prior written approval to publicize a promotion on Facebook if the promotion is administered completely off the Facebook Platform. For example, a company may want to run a promotion on its website in which consumers are invited to complete an entry form for the chance to win a prize. Under the Promotions Guidelines, that company would be free to advertise or reference this promotion on its Facebook Page without permission from Facebook. These advertisements would direct Facebook users to the company's website where the promotion is hosted.

However, even though permission is not required, companies still have to follow some basic rules. For example, a company may not represent or imply that Facebook is a sponsor or administrator of the promotion or mention Facebook in the rules or other materials. Moreover, the company may not condition entry upon taking any action on Facebook, such as updating a status, posting on a profile or Page, or uploading a photo. If Facebook determines that a company has violated any of Facebook's terms, Facebook may remove any materials relating to the promotion or disable a company's Page or account.

Requirements For Administering A Promotion On Facebook

The rules for administering promotions on the Facebook Platform are more strict. Companies may not administer a promotion on the Facebook Platform unless they have received prior written approval from Facebook. If your company is already working with a Facebook account representative, you can contact that representative to begin the approval process. If your company is not currently working with a Facebook account representative, you can use the contact cited in the Facebook Promotions Guidelines to inquire about working with an account representative. It is likely that you will have to buy advertising on Facebook in order to get permission.

If your company works with an account

representative to receive the necessary approvals, you will have to comply with a number of additional requirements set forth in the Promotions Guidelines. Following are some of the key requirements:

- You may not administer a promotion using Facebook's functionality, but you may administer a promotion through an application on Facebook. So while you may not allow a user to enter the promotion by sending a Facebook message to your company, you could include the promotion in an application developed by your company (or a third party) and located on a tab on your company's Facebook Page.

- You must include the following language in a clear and conspicuous manner adjacent to any promotion entry field: “This promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook. You understand that you are providing your information to [recipient(s) of information] and not to Facebook. The information you provide will only be used for [disclose any way that you plan to use the user's information].”

- You must include the following provisions in the official rules: (a) an acknowledgment that the promotion is in no way sponsored, endorsed, or administered by Facebook; (b) a statement that entrants release Facebook from any liability associated with the promotion; and (c) instructions that all questions should be directed to you, rather than to Facebook.

- You may not use the name “Facebook” in the promotion's rules, except for specific language that provides instructions on how to enter and in the provisions described in the preceding bullet.

- Your company must designate an individual to act as a primary contact to address questions from Facebook.

- You must submit materials to be used as part of the promotion to Facebook for review at least seven days prior to launch. These materials must be approved in writing by Facebook in order to be used.

Companies should pay close attention to these requirements before designing a promotion.

General Restrictions On Promotions

The Facebook Promotions Guidelines also include a number of general restrictions on the promotions that can be publicized or administered on Facebook. For example:

- Promotions cannot be open to individuals who are under 18 years of age.

- Promotions cannot be open to individuals who reside in any country that is embargoed by the United States. In addition, sweepstakes cannot be open to individuals who reside in Belgium, Norway, Sweden, or India.

- Promotions cannot be designed to promote gambling, tobacco, dairy, firearms, prescription drugs, or gasoline.

- The prize in a promotion cannot include alcohol, tobacco, dairy, firearms, or prescription drugs.

- A company cannot condition entry in a sweepstakes on purchase of a product, completion of a lengthy task, or another form of consideration.

Keep in mind that these restrictions are just an attempt by Facebook to draw some boundaries on the types of promotions that can be offered on its platform – the restrictions are not a comprehensive guide to what is and is not lawful. Just because something is allowed on the Facebook Platform does not necessarily mean that it is lawful. For example, there are many countries that do not appear on Facebook's blacklist in which

a promotion could be unlawful. And just because something is prohibited on Facebook does not mean that it is generally unlawful. For example, it is generally not unlawful to open a promotion to people who are under 18 and only a few states prohibit promotions that involve dairy or gasoline. Check with your legal counsel to determine whether your promotion complies with applicable laws.

Use Of Facebook's Trademarks

You cannot use the Facebook name, trademarks, trade names, copyrights, or any other Facebook intellectual property in the rules or any other materials relating to the promotion, without express written consent.

Examples Of What Companies Can and Cannot Do

The new Guidelines provide some helpful examples of things that companies can and cannot do:

- You cannot: Condition entry in the promotion upon a user providing content on Facebook, such as making a post on a profile or Page, status comment, or photo upload.

- You can: Use a third-party application to condition entry to the promotion upon a user providing content. For example, you may administer a photo contest whereby a user uploads a photo through a third-party application to enter the contest.

- You cannot: Administer a promotion that users automatically enter by becoming a fan of your Page.

- You can: Only allow fans of your Page to access the tab that contains the third-party application for the promotion.

- You cannot: Notify winners through Facebook, such as through Facebook messages, chat, or posts on profiles or Pages.

- You can: Collect an address or e-mail through the third-party application for the promotion in order to contact the winner by e-mail or standard mail.

- You cannot: Instruct people (in the rules or elsewhere) to sign up for a Facebook account before they enter the promotion.

- You can: Instruct users to visit the third-party application to enter the promotion. Since users must have a Facebook account in order to access an application on the Facebook Platform, if you give this instruction, they will be prompted to sign up for a Facebook account if they do not already have one.

All of these things have a significant impact on how a promotion can be structured, so it's important to review the list early in the planning stages.

What This Means For Marketers And Counsel

The use of promotions on social networking sites like Facebook offers great opportunities for real-time interaction with users and creation of a message that can spread virally to millions of users. If your company wants to take advantage of the popularity and reach of Facebook to publicize or administer a promotion, you need to make sure that you comply with the Facebook Promotions Guidelines, as well as all applicable laws. Failure to do so can result in termination of your company's rights on Facebook and bad publicity.

¹ Facebook, Facebook Promotions Guidelines, http://www.facebook.com/promotions_guidelines.php.

² Facebook, Press Room, <http://www.facebook.com/press/info.php?statistics>.

³ Id.

⁴ Id.

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