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Facebook Eases Rules for Running Promotions on Brand Pages

As of August 27, Facebook has changed some of its rules for businesses running promotions on the social media platform. Designed to make it easier to administer promotions on Facebook, the new rules remove several logistical requirements that previously deterred small businesses from using Facebook for their promotions. See announcement here.

Key changes include:

- *An app is no longer required* - Now promotions, such as contests and sweepstakes, can be run using the sponsor's page or a custom-built app.
- *Facebook features can be used for entry* - Although prohibited in the past, now sponsors can collect entries by having people post on the sponsor's page, comment on/like a page post or message the page. But personal timelines cannot be used (so sponsors can't encourage people to "share on their timeline to enter").
- *Likes can now be used as a voting mechanism* - In the past, sponsors had to use a separate means to collect votes. Now, the Like button can be used, consolidating these steps.

However, sponsors can't encourage users to inaccurately tag content (e.g., tag themselves in content they are not actually depicted in).

Also, other existing rules still apply, such as the requirement that entrants release Facebook from liability and that sponsors make clear that they (and not Facebook) are administering the promotion and collecting any content/information from users. See the Facebook Pages Terms, Advertising Guidelines and other pages linked therein for more information.

What this means for you:

Brand owners and businesses of all sizes now have another option for running contests and sweepstakes on Facebook. Many marketers have applauded the changes, including the ability to run a promotion without hiring a third-party app developer. Others note possible difficulties in administering promotions on a page, rather than through an app that offers more control over random drawings and enables sponsors to collect entrants' e-mail addresses.

Several legal issues arise from these changes. Sponsors need to ensure that random drawings are truly "random" to avoid misrepresenting their promotions. Sponsors remain responsible for the lawful operation of their promotions, including disclosure of the material terms and conditions, and should consider how to make these disclosures (including the mandatory release of Facebook) on their pages, along with setting forth the official rules that govern the promotion, in a clear and effective manner. And although "Like gating" is commonly used, it remains to be seen whether any jurisdictions will find that requiring people to engage with the business on Facebook (via liking, sharing, or commenting on a page post) rises to the level of consideration. If so, an alternative method of entry may be needed to avoid the combination of "prize, chance and consideration," the three indicia of an illegal lottery.

Day Pitney lawyers regularly advise clients on legal issues relating to branding, promotions and social media. Before launching your first Facebook contest or sweepstakes promotion, please feel free to contact us.