

Daily News Sweeps Mess Offers Lesson

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Sweepstakes are powerful promotional marketing tools, but as the recent New York Daily News fiasco shows, errors can expose a company to liability, not to mention a public relations debacle. Consider the importance of proactive planning for what could go wrong in conducting a sweepstakes.

What could go wrong? Imagine you are a large newspaper in a large media market. You plan a complex "scratch and win" sweepstakes that will run for six weeks in which scratch-off cards are distributed in the Sunday edition. Each card has a number of boxes. Hidden underneath each box are dollar figures for cash prizes ranging from \$25 to \$100,000. Each day of the week, you will print the numbers of boxes to be scratched off that day's card.

If three of the boxes have the same dollar value, then the player gets that cash prize. You plan to award only one prize of \$100,000, along with 2,500 prizes of lesser amounts each week. You budget enormous publicity dollars to draw attention to the game.

But two weeks into the game, a mistake occurs. Instead of advising the entrants to scratch off numbered box 12, you tell them to scratch the box numbered 13. Uh-oh. As a result, hundreds of entrants (instead of the one person you planned) thought they won the \$100,000 grand prize. Those entrants began celebrating, only to learn that their anticipated good fortune was eviscerated by a printing error.

This is not a speculative scenario. This happened to the Daily News, last month and it has happened to other companies in the past. The Daily News claims that its sweepstakes administrator, D.L. Blair, transmitted to it the incorrect box to scratch, resulting in the error.

The newspaper faces a flurry of lawsuits and a PR nightmare. There has been an outpouring of stories about individuals who thought their luck had finally changed and what they planned to do with the money, only to find out the

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Daily News will not be awarding them the grand prize money.

To try to soothe angry would-be winners, the Daily News said it was creating a new drawing for those who thought they had winning tickets, offering five \$100,000 prizes, five \$10,000 awards and other cash payouts. However, the newspaper clearly faces a constant battle to protect its reputation, confidence and faith in future promotions.

The best defense: preparation. When misfortune strikes, one thing can be counted on: lawsuits. There have been reports of attorneys preparing lawsuits against the Daily News. However, because the newspaper appears to have planned carefully for such a contingency in advance of the sweepstakes launch, potential plaintiffs face an uphill battle. Why?

A sweepstakes' official rules are analogous to a contract with the public, and the terms and conditions govern the parties' obligations. The Daily News had the foresight to include what is known as a "Kraft clause" in the rules: "If due to a printing, production or other error, more prizes are claimed than are intended to be awarded for any prize level per the above, the intended prizes will be awarded in a random drawing from among all verified and validated prize claims received for that prize level. In no event will more than the stated number of prizes be awarded."

Though it does not help the PR nightmare, this important clause should protect the Daily News from the legal obligation of having to make payments to hundreds of mistaken \$100,000 winners.

The law. The origin of this clause involves the purveyor of cheese singles, Kraft. In 1989, Kraft had the "Ready to Roll" sweepstakes where it planned to give away one grand prize car worth about \$17,000. The odds of winning the grand prize were supposed to be 1 in 15,160,000. Kraft mistakenly produced and seeded far more winning game pieces than was instructed to print.

Instead of a limited number of winners, almost all of the game pieces had winning pieces of some kind, resulting in a monumental PR debacle and a litigation nightmare.

Smart companies running sweepstakes have benefited from Kraft's mistake. Official rules frequently include a Kraft clause to protect the administrator from printing, typographical and other errors. Courts have upheld the application of similar Kraft clauses.

The Daily News' situation stresses the importance of well-crafted and legally reviewed sweepstakes rules. It is imperative that sweepstakes promoters plan ahead by exploring what could go wrong and determining in advance what will be done in the unlikely event something does go wrong.