

Marketing and Promotions

The spectacular rise of social media and other online platforms has opened new opportunities for brands to engage consumers through promotions. Our attorneys help launch hundreds of marketing and promotional programs each year. From text and email message campaigns to cause marketing, sweepstakes and contests to coupons, rebates, premiums, free trials and loyalty reward programs, we know them all well. Beyond the sheer quantity, the quality stands out as well. Our clients' work is inevitably among the most visible and influential promotions of any given year.

Staying Within the Rules

As a firm, we are steeped in the history and evolution of promotional techniques, from the first cents-off coupons to the latest TikTok Challenge to NFT/cryptocurrency giveaways to the latest global UGC contest. Our clients draw on that background to help them launch contests and other promotions across any and all platforms, and to protect them against possible violations of the rules governing them. Many of those rules were developed when promotions were primarily conducted by direct mail, so in the absence of updated laws and legal clarity, we provide the know-how — shaped by long experience — to apply those old rules to new promotional techniques and platforms.

Savvy Advice and Counsel

The need for updated laws does not stop regulators from closely scrutinizing promotional and marketing practices. It falls to our attorneys, therefore, to bring practical guidance to our clients' promotional and marketing activities. Whether we're providing sensible guidance on the commercial coventurer and charitable solicitation laws or strict legal guidance on the Telephone Consumer Protection Act (TCPA) or the CAN-SPAM Act, we understand the regulatory limits and we make sure our clients' disclosures, releases and contracts comply with them. At the same time, we advise clients on how to market their campaigns as aggressively as possible within those limits. We look at everything with a market-savvy eye. We review their offers, draft their terms, scrutinize their communications and make smart judgment calls when the current laws seem outdated.

Representative Matters

- Integrated into the legal department at one of the most innovative and fastest-growing cosmetic and beauty brands in the world. Advised on the creation of the client's loyalty program and reviewed all advertising and marketing materials to ensure compliance with all applicable laws and regulations.
- Advised a major automobile company in developing and implementing a marketing strategy for online pre-sale and reservation programs to promote the launch of new product lines. Routinely provided guidance for structuring and marketing retail sales events, including financing, lease, and cash-back offers, and special promotional programs, including limited offers, cash-back initiatives, contests and sweepstakes, to ensure compliance with appropriate state and federal laws.
- Advising a major sports league on structuring an equipment development competition to protect the health and safety of players. This project highlights the league's commitment to safety and innovation in preserving the essence of the game.

- Advised a major publishing company and leading language learning company on updating its free trial offer, negative option marketing, and referral practices and terms to comply with important changes in state and federal laws that impact the sale of its digital content.
- Advised one of the largest pizza chains in the United States on a free pizza giveaway tied to a major sports event that generated millions of dollars in free publicity. Drafted the promotion's terms & conditions and appropriate disclaimers, reviewed social media posts and press releases and advised on security issues to help minimize the risks of awarding free products to the public.