

Gambling on Facebook

The social networking site Facebook has become one of the most effective ways to promote products and services. However, this social network has set some conditions to launch promotions within its platform.

Facebook does not allow managing promotions through its own application. However, it could be possible to manage promotions through applications developed for that by a third party and then uploaded to Facebook through Developers tool.

The legal bases of the promotion have to expressly exonerate Facebook of any kind of liability regarding with the participants of that promotion; also, the promoters have to expressly establish that Facebook is not who is promoting the product and neither receives any personal data of the participants.

Another standard established by the social network is that the registration of the promotion should not use functions that are from Facebook, as the button "I Like". This can neither be used like voting mechanism.

In addition, the prize to the winners will not be communicated through Facebook. For that reason in many cases the promoter requests to the customers to provide an email direction, not only to be able to elaborate a data base but also to communicate the award.

The Facebook Promotion Guidelines try to protect the users. In case of breach of the requirements established by the social network, the corporate page can be erased. Nevertheless, in many occasions, the users denounce certain pages that are still alive.

Regarding the entities that have a corporate Web page in Facebook and address a Spain they will have to fulfill the requirements according to the Law 13/2011, of Regulation of the Game.

The aforementioned Law distinguishes the different kinds of bets that can be used by each organization. Within these we will emphasize the difference between "Content" and "Random Combinations with Advertising or Promotional Aims "(hereinafter "Drawing").

The main difference between these two types of bets is the necessity to accomplish a consideration by the customer to be able to participate. Therefore, while the "Content", in order to participate requires an economic disbursement by the client through a call, an SMS, or any telematic, IT or electronic equivalent way to be able to take part, on the contrary, the "Drawing", is free, and only requires if any to be a customer.

Ernst & Young IP/IT. Privacy:

José Domínguez Leandro
Jose.DominguezLeandro@es.ey.com

Rodrigo González Ruiz
Rodrigo.GonzalezRuiz@es.ey.com

Mía Melvin Gámir
MiaMariaTeresa.MelvinGamir@es.ey.com

Another important difference, are the legal requirements for the promoters who have to be satisfied for each scenario. In the first case, the legal requirements are stricter, establishing the need of a formal request, the corresponding concession to exercise this type of activities and finally, a tax payment of twenty per cent over the amount paid by the participants to take part in the "Content".

To carry out a single "Drawing" it will only be necessary a simple previous notice to the Spanish "Lotteries and Bets of the State" in case that is done at a national level, understanding for that if at least involves two Autonomous Communities or when it is carried out in Internet; in case they are done at a Regional level the notice will go to the administrative body in charge of "Lotteries and Bets" in that territory. In addition, the promoter will have to satisfy a tax of ten percent on the market value of the prize offered to the winner of the "Drawing", and between a ten and fifteen percent in case of an Autonomous Community, depending of what is regulated each one on them.

Additionally, it is important to mention the process for the "Drawing". First, it is necessary to establish the bases for the "Drawing", where the following has to be mentioned: the identification of the promoter, the territorial scope and who is the subject of the promotion, the date of when begins and end to be able to register, the date and the process to select the winners, the general conditions and the free character of the same one, the personal prohibitions, the promoted product, the nature and the value of the offered prize and the way to communicate the prize to the winners and the expiry period to claim it. Secondly, it is recommended, although it is not mandatory, to deposit the bases for the "Drawing" before a Public Notary.

This publication only provides an overview outline regarding its subject and does not constitute any legal, tax, commercial or similar advice. Ernst & Young Abogados shall not be liable for any claim, action or lawsuit arising from the information contained herein.