

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

IS THIS THE END OF PREMIUM TEXT MESSAGING GAMES?

More than four years after lawsuits were filed against Fox Broadcasting, NBC, and other parties claiming that sweepstakes promoted on the TV shows “Deal Or No Deal” and “American Idol” were illegal under California and Massachusetts law, the parties have reached a tentative settlement.

The settlement, scheduled for a preliminary hearing in federal district court in California on September 19, provides that the defendants will:

- 1) refund all premium text message charges paid by class members – potentially millions of people – who submit valid claims,
- 2) pay attorney’s fees and costs up to about \$5.2 million, and
- 3) consent to an injunction that bars them for five years from creating, sponsoring, or operating any contest or sweepstakes for which entrants are offered the possibility of winning a prize in which people who enter via premium text message do not receive something of comparable value to the premium message charge in addition to their entry.

BACKGROUND

The settlement relates to the Lucky Case Game promotional sweepstakes that aired between December 2005 and February 2008 on the television show “Deal or No Deal” on NBC and the American Idol Challenge promotional sweepstakes that aired between February and May 2007 on the “American Idol” TV show.

Viewers were able to participate in these games either by entering for free via the internet (although the lawsuits claimed that that option was not highly promoted) or by entering via a premium text message for 49 or 99 cents, depending on the time period.

In the Lucky Case Game, viewers were invited to choose which of six on-screen gold briefcases was the “lucky case.” At the end of the program, the winning briefcase was

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THE BOTTOM LINE

Do the lawsuits and settlement mean the end of premium text messaging promotional games? Definitely not. Perfectly legal promotional games can be structured using premium text messaging as a means of entry. Certainly, however, the appropriate legal structure of such promotions and related business goals must be carefully considered and balanced against any potential risks – of litigation, lost executive time, and potential settlement costs – in the event they are challenged in court.

Indeed, the one principal lesson from these lawsuits and the settlement is this: Advertisers, producers, sponsors, and broadcast networks must be sure to review both state and federal law and structure their promotions in a manner to help reduce any potential risks.

revealed, and the entrants choosing the winning briefcase were entered into a random drawing. The winner of that drawing received a prize of as much as \$10,000.

In the American Idol Challenge, viewers were invited to answer a trivia question and submit their answers. The winner was selected at random from viewers who answered the trivia question correctly.

THE CLAIMS

The class action plaintiffs contended that each game constituted an illegal lottery and named as defendants the companies that produced, administered, sponsored, and broadcast the games. The defendants denied all allegations of wrongdoing and asserted many defenses, but agreed to settle to avoid the time, risk, and expense of defending the actions.

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