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Advertising and Promotions Law ALERT

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FCC Targets Three Radio Stations for Failing to Comply with On-Air Contest Rules

In February, the Federal Communications Commission announced three enforcement actions against radio stations for failing to comply with on-air contest rules.

The rules require a radio station that broadcasts or advertises information about a contest it conducts to fully and accurately disclose the material terms of the contest, and to conduct the contest substantially as announced or advertised. In addition, the contest description should not be false, misleading or deceptive with respect to any material term. (See 47 C.F.R. §73.1216.)

In one case, the FCC emphasized that providing the material terms of a contest on a radio station's web site is not a substitute for providing the material terms on the air. In another case, the FCC concluded that the on-air contest rules applied to a contest that the radio station said was a joke because numerous consumers were led to believe it was a real contest. In the third case, the FCC stated that a radio station that conducted a contest online for its rewards members was subject to the on-air contest rules because the station advertised the contest on-air and told listeners who entered the contest to stay tuned to the station.

Below are details about each enforcement action.

The FCC fined station KDGS in Kansas $4,000 for failing to announce all material terms of a contest (even though the material terms were available on the radio station's web site) and for failing to comply with the material terms of the contest. The Santa's Sack contest invited listeners to call the radio station to guess what was in Santa's Sack. The designated called who guessed correctly would receive the contents of the sack and a teddy bear. A listener who guessed the actual contents of the sack ($1,000) was told she was wrong, and the following day she heard another listener guess $1,000 who was awarded the prize. The listener who was the first to correctly guess the amount complained to the station, but the station did not offer to rectify the mistake. The listener then filed a complaint with the FCC. After the FCC initiated an investigation, the radio station claimed that its staff was confused about how the winner would be determined – some of the staff members thought that the winning guess had to include the actual amount plus the amount of the teddy bear ($10). The radio station also sent a check for $1,000 to the listener who had filed the complaint. The radio station also claimed that listeners could find the material terms of the contest on its web site. The FCC did not find any of these arguments convincing and concluded that the radio station violated the on-air contest rules by (1) failing to announce on-air the material terms of the contest and (2) failing to comply with the material terms of the contest. Specifically, the FCC stated that the radio station did not comply with its own method for determining the winner. The FCC also held that the radio station's payment to the complainant of $1,000 did not absolve it of liability and ordered the station to pay a fine of $4,000.

The FCC issued a Notice of Apparent Liability for Forfeiture against KDKA in Pittsburgh. On Thanksgiving day in 2007, an on-air host said that he would give away $1,000,000 to the thirteenth caller and that he would give away "a million an hour" thereafter. A listener called and was told he was the thirteenth caller and was then placed on hold for 43 minutes. When the listener finally was connected to the on-air host, he asked about the prize and then was disconnected. In response to the FCC's Letter of Inquiry about the incident, the radio station claimed that the on-air contest rules did not apply because the contest was a joke and that listeners should have realized that. The FCC disagreed, noting that the recording and transcript of the radio show provided by the radio station included several listeners who called to try to win the prize, and that the on-air host did not make a statement that the contest was a joke and instead announced it several times during his 3-hour show and called it "the real deal." The FCC stated that "the relevant focus of the analysis under the rule is the announcement's impact on the public, and not the announcer's state of mind." After finding that the on-air contest rules applied, the FCC concluded that the station failed to announce the material terms of the contest and failed to comply with the material terms (i.e., the station did not award $1,000,000 to the thirteenth caller), and ordered the station to pay a fine of $6,000.

In the third case, the FCC issued a Notice of Apparent Liability for Forfeiture against station KOST in Los Angeles. The radio station conducted a contest online for its rewards members in which it held several drawings for awarding tickets to the musical Les Miserables. The radio station's web site indicated that the contest would be conducted from 3:50 pm on May 29, 2006, to 8:50 pm on June 2, 2006. A radio station listener complained to the FCC after the station awarded the prize to three people at 3:00 pm on June 2, several hours before the stated closing time of the contest. In response to the FCC's Letter of Inquiry, the radio station claimed that the on-air contest rules did not apply to its contest because the contest was conducted exclusively online, not on the air, and the on-air announcements about the contest were not "substantive". The FCC disagreed, stating that the rules apply to "all contests conducted by the licensee and broadcast to the public." The FCC noted that the radio station announced the contest several times on-air and told listeners who entered the contest to stay tuned to the radio station. Having decided that the on-air contest rules did apply, the FCC concluded that the radio station failed to comply with the rules by failing to announce the material terms, including the time and means of selecting winners, when prizes could be won, and the total number of prizes. The FCC ordered the station to pay a fine of $6,000.

For advertisers, it is helpful to note that while the FCC can only take action against broadcasters, there might be "collateral damage" to advertisers who are prize suppliers or otherwise affiliated with the promotion in terms of negative PR, potential plaintiff's bar claims and the like, and these types of cases highlight the need for advertisers to be as vigilant as possible when doing tie-ins with radio stations. For more information on the content of this alert, please contact a member of Loeb & Loeb's Advertising and Promotions Group.

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