



Advertising and Promotions Law

ALERT
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LOEB & LOEB adds Knowledge.

Update on Text Message Promotions Litigation

The Georgia Supreme Court has effectively sidelined a class action law suit alleging that a sweepstakes that allows entry by text message for a fee is an illegal lottery.

Several plaintiffs filed suit in federal court in Georgia against the producers and broadcaster of the television show "Deal or No Deal" as well as the organizers and sponsors of the Lucky Case Game which was broadcast during the television show. Viewers were invited to guess which case was the lucky case and could enter by text message, which cost 99¢ plus any other text message fees charged by the wireless service provider; viewers could also enter by filling in a form online for free. The plaintiffs had claimed that the sweepstakes violated a Georgia statute that allows the loser of a "gambling consideration" to maintain a private action to recover actions from the winner (Ga. Code Ann. 13-8-3(b)). The plaintiffs were seeking restitution of the fees they and all other Georgia residents paid to enter the sweepstakes.

The federal district court in Georgia asked the Georgia Supreme Court if the Georgia statute authorizes the filing of a civil suit to recover money paid or lost on account of one's participation in an illegal lottery. The Georgia Supreme Court did not answer the question of whether the sweepstakes is an illegal lottery but held that it does not violate §13-8-3(b) because there is no gambling contract between the plaintiffs and those offering the chance to win the game. Prior case law in Georgia has held that no gambling contract exists unless the parties contracted to

gamble against each other and one party lost. The court concluded by saying that §13-8-3(b) does not authorize the plaintiffs to recover from the defendants the text message charges they paid to participate in the Lucky Case Game. When this answer is certified to the federal district court, the district court will most likely grant the defendants' motion to dismiss the complaint.

Several similar suits are still being litigated in California.

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