



**KATHERINE HAWES**  
 Founder, Principal Solicitor  
 Aquarius Lawyers

# HOW TO WIN WITH COMPETITIONS

Running a giveaway or competition can help promote your business, but there are rules, regulations and laws you need to follow.

**C**ompetitions are a great way to create a buzz around your business, and a well-executed giveaway or competition has the potential to help your business grow at a relatively low cost.

However, before adopting this promotional strategy, you must ensure you are familiar with the relevant laws, rules, regulations and guidelines that govern commercial competitions.

Be sure to research the competition rules for each jurisdiction in which you plan to run your competition. This may well extend beyond the jurisdiction in which your business is registered or trading.

For competitions where chance, rather than skill, determines who wins the prizes, some jurisdictions require you to apply for a permit. These can be downloaded from the Australian Business Licence Information Service (ABLIS) website. Permits ensure trade promotion strategies are run fairly with all legal responsibilities being met.

## USING INFORMATION

Under the Privacy Act 1988, you must also adhere to any rules concerning the collection, use and storage of personal information you may receive from competition entrants. Most jurisdictions also require you to publish a complete set of terms and conditions that must be readily available to all entrants.

Further, you must disclose who is collecting the information, how it will be collected, what it will be used for, how it will be stored, and who will be given access to it.

A useful set of guidelines about collecting competition information can be found in the National Privacy Principles. These set out the main principles of the Privacy Act.

Using social media as a platform to promote business has grown exponentially in recent decades. Competitions on social media have their own legal considerations.

**“IT IS IMPORTANT TO ABIDE BY THE RULES OF THE PARTICULAR SOCIAL-MEDIA PLATFORM(S) YOU USE TO LAUNCH YOUR COMPETITION.”**

Enforced across Australia, the Spam Act prohibits you from sending unsolicited commercial electronic messages, known as spam. Spam is defined broadly to include messages that offer, advertise or promote the supply or supplier of commercial products and interests, as well as messages that promote commercial gain via deception or dishonesty.

While social-media competitions may provide you with the contact

details of potential clients, you need to be careful that any promotional messages you send do not fall under the definition of spam.

## CONSENT FIRST

If you have gained consent first, it is perfectly legal to send promotional messages to these contacts. Consent can either be expressed or inferred. Express consent can be obtained, for example, by incorporating a tick box on the competition entry form that gives permission for you to send them electronic messages. Inferred consent, however, is much more complicated and may be drawn from the entrant's conduct.

It is also important to abide by the rules of the particular social-media platform(s) you use to launch your competition. Facebook is currently the most popular platform, and it has a stringent competition policy. If this is disregarded, the offending competition will be removed. For example, the use of personal timelines and friend connections to administer promotions, such as “share on your Timeline to enter”, is prohibited.

In summary, when using competition to promote your business, be aware of the serious responsibility of ensuring that your competition and related conduct complies with all rules relevant to your jurisdiction and the platform used. The first step, therefore, is to do your homework and find out what rules apply. ■