





**COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF CONSUMER AFFAIRS  
SECRETARY'S OFFICE**

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**SWEEPSTAKES REGULATIONS**

**Approved on October 27, 2009**

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**SWEEPSTAKE REGULATIONS**

**RULE 1: LEGAL AUTHORITY**

These Regulations are promulgated in reliance on the powers granted to the Secretary of the Department of Consumer Affairs by Act Number 5 of April 23, 1973; Act Number 148 of July 1, 1968; Act Number 97 of June 19, 1953; Act Number 228 of May 12, 1942 and Act Number 170 of August 12, 1988, as amended.

**RULE 2: GENERAL PURPOSES**

These Regulations establish consumer protection rules governing commercial promotion by means of sweepstakes. The purpose thereof is for every participant to receive the necessary information regarding the procedure, terms and conditions of the sweepstakes and the proper award of the prizes.

The Department of Consumer Affairs promulgates these Regulations intended to establish guidelines and acknowledge rights and obligations regarding the promotion of sweepstakes in Puerto Rico. Owing to the wide variety of sweepstakes that may be carried out, by means of these Regulations, the Department establishes the minimum levels of disclosure, dissemination and publication. It also establishes procedures to modify or change the rules, terms and conditions and prizes of the sweepstakes, as well as the grounds for cancellation or suspension of the sweepstakes.

### **RULE 3: SCOPE AND APPLICATION**

These Regulations apply to any person who advertises, makes, promotes, holds, organizes or otherwise entrusts the holding of sweepstakes to promote companies, institutions, products, goods, services or any other purpose of commercial gain.

They do not apply to activities limited to intellectual, or sports competitions or games where some kind of talent, skill capability, qualification or other special attribute is displayed which is the predominant determining element for the selection of the winner. They likewise do not apply to not for profit institutions, associations or political parties.

### **RULE 4: INTERPRETATION**

These regulations shall be liberally construed in favor of the consumer.

In case of discrepancies between the original text in Spanish and its translation into English, the Spanish text will prevail.

### **RULE 5: DEFINITIONS**

The words and phrases used in these Regulations shall be interpreted according to the context in which they are used and shall have the meaning accepted by common usage.

Where applicable, the meanings given to terms defined herein shall be equally applicable to both present and future, the masculine and feminine and the singular and plural forms of such terms.

As used herein, the following terms shall have the following meanings:

- 1. Entrant** – an individual participating in a sweepstakes organized to grant prizes.
- 2. Sweepstakes** – an activity whereby an offer is made to more than one person,

of the opportunity or expectation that one or more, but not all of them will receive one or more prizes, with chance being the predominant element in the selection of the winner.

Any sweepstakes where participants are required to pay Consideration will be considered an illegal lottery pursuant to Section 15 of the Act No. 10 of May 24, 1989, as amended, unless the promoter provides at least one alternative way of participating without having to pay such Consideration.

**3. Consideration-** provision of a monetary payment that financially benefits the promoter or a person related to the promoter. It does not include the requirement by the promoter that participants provide self-addressed and stamped envelopes, visit a commercial establishment or any other place, pay standard text messaging charges that do not financially benefit the promoter, or pay any other charges or fees to unrelated third parties for the use of any other technology as a means to participate in a Sweepstakes. All alternative methods of entry must be disclosed in the full rules of the Sweepstakes.

**4. Department** – the Department of Consumer Affairs.

**5. Day** – a natural day, unless otherwise specified.

**6. Participating establishment** – a commercial outlet where business transactions are made directly with consumers, or where some direct financial gain may be derived from the visit of consumers, or where the full Sweepstakes Rules and entry therein may be obtained during the effective period of the Sweepstakes.

**7. Facsimile** – any written document that reasonably refers to the entry in, product or company sponsoring the sweepstakes, and includes paper manuscripts,

drawings and similar reproductions. It does not include mechanical reproductions such as photocopies, mimeographed copies or computer printouts, among others.

**8. Alternate Winner** – the entrant to whom the prize offered by the promoter will be awarded in the event that the original winner is disqualified.

**9. Instant Win Game** – modality of sweepstakes whereby the consumer can become a winner immediately, or could receive prizes through the mere possession of one or more entries.

**10. Media** – includes television, radio, movies, the postal service, newspapers, magazines, flyers, loose leaves, signage or any other media designed to inform the public of the existence of a sweepstakes.

**11. Offer** – the prizes and the terms and conditions under which they will be granted.

**12. Entry** – the method, form or manner of participating in a sweepstakes. It includes coupons, tickets, labels, facsimiles, product parts or any other form or method of participating.

**13. Person** – individuals or legal entities.

**14. Prize** – any item of personal or real property, merchandise, service, item, object, product, advantage, benefit or compensation having an actual value obtained by the winner.

**15. Available prizes means -**

a) For an Instant Win Game – “available prizes” means those prizes that have yet to be won.

b) For a sweepstakes that involves a random drawing – “available prizes” means those prizes that are available to be won by the drawing. See Rule 6

(C)(13) for process of disposing of unclaimed prizes in a random drawing.

**16. Promoter** – the businessman, agent or representative who announces, makes, favors, holds, organizes, carries out or otherwise promotes or entrusts the holding of sweepstakes directly or represented by a third party.

**17. Initial Publication or Dissemination** – the date on which the full Sweepstakes Rules are first published, disseminated, distributed, circulated, submitted, displayed, exhibited or otherwise disseminated in Puerto Rico.

**18. Sweepstakes Rules** – the full set of terms, conditions and factors that define the operation of a sweepstakes.

**19. Secretary** – the Secretary of the Department.

**20. Draw** – sweepstakes system where the consumer must send, submit or deposit entries which may be selected to determine the winner or winners by a random drawing.

**21. Reasonable Period** – a period not to exceed three (3) months.

**22. Abbreviated Rules** – a disclosure of the material terms and conditions of the sweepstakes, which at a minimum contain (1) the end date; (2) eligibility requirements for entry; (3) the name of the promoter; (4) a statement that no purchase is necessary to enter or play the game; and (5) disclosure of where the Sweepstakes Rules can be obtained.

## **RULE 6: INFORMATION TO BE DISCLOSED OR PUBLISHED**

A. The Sweepstakes Rules shall be disclosed or published in at least one of the following manners:

1. By means of publication or dissemination, in a font size no smaller than (6)



point, in at least one general circulation newspaper or magazine in the area covered by the sweepstakes at the outset thereof, and once every thirty (30) days following initial publication or dissemination, during the sweepstakes period. Any initial publication or disclosure shall include the full version of the rules; subsequent publications may be condensed and shall include the information set forth in Rule 6 (C), the form, postal or physical address of the places accessible to the public or the e-mail address thereof, or of the promoter's office or of the participating establishments where the complete rules and entry free of charge may be obtained during the sweepstakes period.

2. By means of the dissemination or publication by radio or TV broadcast in the covered area at the outset of the sweepstakes and once every thirty (30) days thereafter during the sweepstakes period. Radio and TV broadcasts shall be made in prime time for the station or TV channel selected by the promoter. Any initial dissemination or publication shall contain the full version of the rules; subsequent disseminations or publications may be condensed and shall include the information set forth in Rule 6 (C), the form, postal or physical address of the places accessible to the public or the e-mail address thereof, or of the promoter's office or of the participating establishments where the complete rules and entries may be obtained free of charge during the sweepstakes period.

Every promoter will be required to keep a copy of the broadcasts wherein he disseminated the Sweepstakes Rules as part of the file required in Rule 13 of these Regulations and to have the written rules available in a sign, printed in a size no smaller than 18" x 24" in a font size no smaller than (14) point, or individual copies or loose leaves in a font size of not less than ten (10) point at all

broadcasting facilities or at its offices available to the public during business hours. If no individual copies or loose leaves with the rules are available, the sign shall specify the postal, physical or e-mail address where an individual copy of the rules and free entry may be requested during the sweepstakes period.

3. By means of signs with the complete certified rules in a size no smaller than 18" x 24", in a font size of not less than fourteen (14) point, or individual copies and loose leaves in a font of not less than ten (10) point at all participating commercial establishments during business hours, or other locations at which entrants can participate in the Sweepstakes, which shall be placed in a place visible to the public. Should the full version of the rules not be available in individual copies or loose leaves, the sign shall specify the postal, physical or e-mail address where an individual copy of the complete rules and free entry may be requested during the entire duration of the sweepstakes.

4. By means of publication of the complete text of the rules on the same package for those sweepstakes promoted only on the packaging of a product, provided they are legible, and further provided that Abbreviated Rules may be used instead of full rules..

5. When the sweepstakes is announced by mail only, the Sweepstakes mailing shall comply with The Deceptive Mail Prevention and Enforcement Act (39 U.S.C. § 3001, et seq. (Public Law 106-168).

6. By means of publication on a freely accessible website.

B. As long as the promoter discloses the Sweepstakes Rules through one of the above methods, the promoter may advertise a sweepstakes without the Sweepstakes Rules provided that in such advertisement the promoter discloses the Abbreviated Rules.

C. The Sweepstakes Rules shall include the following information:

1. Date of beginning and end of the sweepstakes.
2. Eligibility requirements, including age, geographical area and any other special condition for participation. In the absence of specification, it shall be deemed that there are no special requirements or conditions for participation.
3. Form or manner of participating.
4. Prizes to be offered. Any visual representation of a prize shall show the actual features of the offered prize. This obligation shall not be evaded by including the phrase "Not like the illustration" or a similar phrase.
5. Way of selecting the winners, including the manner in which alternate winners will be selected.
6. A statement that no purchase or consideration is required to participate and receive the prize.
7. Participating products and how or where entries may be obtained.
8. The name, physical address, and e-mail or website address of the promoter or the entity responsible for the sweepstakes.
9. When and where the prizes will be available.
10. Whether the prizes are non-transferable.
11. Clearly and prominently any condition, requirement, essential and necessary standard or information that entrants must be aware of.
12. The Sweepstakes Rules shall be published, announced and disseminated in the same language as is used in any advertisement for the Sweepstakes. For example, if

there are advertising materials for a Sweepstakes Rules in both Spanish and English, rules must be published, announced and disseminated in both Spanish and English.

13. The timing within which a winner must claim a prize shall be thirty (30) days from the date on which he receives written notice by certified mail, return receipt requested, unless otherwise specified in the Sweepstakes Rules.

14. In the event of any inconsistency between the full version of the rules and the Abbreviated Rules, the one most beneficial for entrants shall prevail.

D. In addition to the information required in subsection B of this Rule, the following shall be included in the Draw system:

1. The number of draws to be held in the Sweepstakes and the date of each draw.
2. A statement of the odds of winning each prize. If the odds of winning cannot be determined, a statement that “the odds of winning depend upon the number of entries received” shall suffice.
3. If tickets, labels, coupons or entry blanks need to be sent in order to participate, an explanation shall be given to entrants of what that entails for the purpose of the sweepstakes and how and where to obtain them. It shall also be specified that a facsimile may be used to enter.

E. In addition to the information required in subsection B of this Rule, the following shall be included in the Instant Win Game system:

1. That the end of the sweepstakes may be contingent upon delivery of the prizes offered, as long as the total number of such prizes is specified, if applicable.
2. Name, address, dates, times and any other condition to pick up free entries that may indicate an immediate prize, if applicable.

## **RULE 7: OBLIGATIONS OF THE PROMOTER**

Every promoter shall comply with the following provisions:

1. He shall publish or disseminate the Sweepstakes Rules of the sweepstakes as required in Rule (6) and shall keep copies thereof for the duration of the sweepstakes for delivery to whoever requests them.
2. It shall notify the winners of Draws by certified mail, return receipt requested, or by the method otherwise specified in the Sweepstakes Rules. It shall not publish the winners' names without first having sent them the official notifications.
3. Once the entrant has complied with the Sweepstakes Rules and carried out all of the specific conditions for winning, including without limitation all verification conditions, the promoter may not refuse to deliver the prize within a Reasonable Period or such other period that is specified in the Sweepstakes Rules.
4. He shall award all the prizes as advertised.
5. It shall specify and take all necessary actions to ensure that none of its employees, or of the employees of the advertising agency participating in any stage of the sweepstakes, can receive prizes, unless the Sweepstakes is expressly directed to such employees and is not open to the general public.
6. Any Commonwealth of Puerto Rico taxes or assessments levied on the prizes as of the date of delivery thereof to the winner shall be the sole responsibility of the winner of the sweepstakes.
7. If the promoter publishes any advertisement in the media referring to any consideration required in order to participate, it shall include adequate information explaining that such condition is not a requirement in order to participate. Such obligation shall be met by clearly disclosing the Abbreviated Rules and, as appropriate, notifying the public that

facsimiles may be used to enter, that no purchase is required to participate or that the consideration mentioned does not need to be provided, as the case may be, in order to participate.

8. In an Instant Win Game system, promoters shall have free entries available. They may condition delivery of free entries in terms of the number thereof that every consumer will be entitled to receive, and of days and times of delivery, establishing a minimum of three (3) hours a day, along with any other reasonable condition. Such places and conditions for delivery shall be published or disseminated as provided in Rule 6 hereof.

9. Promoters shall ensure that all entrants who comply with the Sweepstakes Rules have the same chances of winning.

10. If they have not complied with the publication requirement, pursuant to Rule (6) hereof, and the absence of such information creates the expectation in the mind of entrants of having won a prize, they may not refuse to deliver the offered prize.

11. If products appear on the local market that in any way indicate or involve the holding of a sweepstakes that excludes Puerto Rico residents, the importer thereof in Puerto Rico shall satisfactorily inform the public that the sweepstakes does not extend to Puerto Rico. If he fails to do so, it shall honor the prize if claimed by an entrant who is apparently the winner. Excluded from this requirement are those instances where the product clearly indicates that the sweepstakes is not valid in Puerto Rico.

12. If any prize offered becomes unavailable for any reason, the promoter shall provide an alternative prize of equal or greater value based on the advertised prize's approximate retail value.

## **RULE 8: MODIFICATION OF THE RULES, TERMS AND CONDITIONS OR PRIZES OF THE SWEEPSTAKES**

Should it be necessary to modify the announced rules, terms and conditions or prizes owing to circumstances reasonably beyond the promoter's control, written notice of such change shall be sent to the Secretary in person or by registered mail, return receipt requested. In the event that the Secretary fails to decide on the petition within ten (10) business days, it shall be deemed to have been approved. In such case, the promoter shall promptly and satisfactorily inform the public by means of one of the publication methods set forth in Rule 6. In the event that the Secretary rejects the change, the original rules shall remain in effect.

The Secretary may penalize promoters who fail to comply with the requirements of this sub-section or who publish or request changes in the Sweepstakes Rules for frivolous reasons or without the proper authorization for such purpose.

## **RULE 9: SUSPENSION OR CANCELLATION OF THE SWEEPSTAKES**

No promoter may suspend or cancel a sweepstakes unless it petitions the Secretary in writing, in person or by certified mail, return receipt requested, and the Secretary authorizes it expressly through a resolution. In the written document requesting the suspension or cancellation of the sweepstakes, the promoter shall describe in detail the reasons why the sweepstakes must be suspended or cancelled. Once the request for suspension or cancellation of the sweepstakes has been considered by the Secretary, he shall determine whether or not it is permissible.

If it is determined that the suspension or cancellation of the sweepstakes is permissible, the promoter shall inform the public immediately and satisfactorily by means of the three

(3) alternatives described in Rule 6(A)(1), 6(A)(2) and 6(A)(3) of these Regulations, and in the manner originally selected, if other than the three (3) above-mentioned alternatives, of the grounds and reasons which led to the suspension or cancellation of the sweepstakes. The promoter shall honor any prize obtained by any Immediate Winner prior to the cancellation or suspension of the sweepstakes.

Conversely, if the Secretary does not approve the request for suspension or cancellation of the Sweepstakes, it will remain in full force and effect and the public shall be notified thereof.

#### **RULE 10: GROUNDS FOR CANCELLATION OF THE SWEEPSTAKES**

The following may be grounds for cancellation of the sweepstakes:

1. If the Secretary, in his sole discretion and after evaluating the rules, terms and conditions of the sweepstakes, finds that the requirements and conditions established herein have not been met.
2. If the promoter or his representative has been convicted of the following offenses in any jurisdiction: forgery, fraud, misrepresentation, larceny, extortion, breach of trust, breaking and entering, theft, bribery or any other offense involving moral turpitude.
3. Commits any of the unlawful practices described in Rule 11 hereof.
4. Commits any deceitful practice or makes any deceitful announcement, as provided in Deceptive Practices and Advertising Regulations, effective.
5. Has three (3) or more criminal complaints decided against him in the Department.
6. Provides incorrect, false or incomplete information.



7. Fails to duly apply for authorization from the Secretary to change, modify or amend the rules, terms and conditions or prizes of the Sweepstakes, or for the cancellation or suspension thereof.

8. Owes the Department or any entrant any sum of money for legal costs, fines or compensation pursuant from a final decision and sign to the laws and regulations under the jurisdiction of the Department.

9. Any other instance where, in the opinion of the Secretary or of his authorized representative, he breaches or contravenes the powers granted to him and his duty to protect the consumer.

If the Department determines that the promoter has incurred in any of the grounds for cancellation of the sweepstakes, it shall notify him in writing to appear at an administrative hearing, at which it will be determined whether the sweepstakes should be cancelled or suspended. Such hearing shall be held within ten (10) days of the date of the notice, in order for the promoter to show the reasons why the Department should not cancel or suspend the sweepstakes, as provided in these regulations.

At such hearing, the promoter may put forward the reasons and the evidence why the sweepstakes should not be cancelled. The Department shall determine, according to the substantive evidence in the administrative file, whether or not the promoter has incurred in any of such grounds. The Secretary's determination shall be issued in the form of an Order or Resolution. Such Order or Resolution shall notify the promoter of his right to file a motion for reconsideration or review of the decision, in accordance with the procedures established in Act No. 170 of August 12, 1988, as amended, and the Department's Adjudicative Procedures Regulations. In addition, he shall be warned that if he fails to comply with the Department's Order or Resolution, he could be fined up to

the maximum amount permitted by Act. No. 5 of April 23, 1973, as amended.

If the Department should determine that the sweepstakes should be cancelled or suspended, the promoter shall follow the procedure for notifying the public set forth in rule 9 of the Regulations. Notice of the cancellation order shall also be given by the promoter to the media where the advertising or broadcasting of advertisements regarding the sweepstakes has been coordinated, in order for such media not to publish or broadcast any advertisement after the date of cancellation thereof.

#### **RULE 11: UNLAWFUL PRACTICE**

Any promoter who:

1. Fails to deliver the prize in accordance with Rule 7(4);
2. Terminates a sweepstake prior to the date of conclusion thereof without having sought the authorization of the Secretary in compliance with the provisions of Rule 9 or after receiving notice from the Secretary that such termination is not permitted;
3. Uses entrants' name or other information for a purpose that might represent a financial gain for the promoter or for any other person without the entrant's consent;
4. Does not include the warranty documents offered by the manufacturer for his products, where applicable, with the prizes;
5. Misleads the public or gives a false or incorrect idea in any way regarding the terms, conditions, benefits, opportunity or any other characteristic of the sweepstakes and of the prizes to be offered;
6. Does not use legitimate means to select the winners;

7. Implies the existence of a sweepstakes or of having won a prize in order to obtain any consideration;
8. Unlawfully withholds any prize offered;
9. Unlawfully reserves for himself the award of unclaimed prizes;
10. Does not include a commercially reasonable method for selecting alternate winners in the event that a winner cannot be determined initially, to the extent practicable in light of the nature of the prize (e.g., tickets to an event or perishable items may not be practically subject to a method of selecting alternate winners given the time it could take to determine such alternate winners); shall commit an unlawful practice.

#### **RULE 12: SCOPE OF THE OFFER**

The scope of the offer shall be construed in the manner most favorable to entrants.

The Sweepstakes Rules govern the operation of the sweepstakes; provided that any ambiguity shall be interpreted in favor of the entrants.

#### **RULE 13: FILES**

Every promoter shall keep all the files relating to the sweepstakes for a period of not less than one (1) year following the end of the sweepstakes, including:

1. The Sweepstakes Rules.
2. Representative samples of all advertising material used to promote the sweepstakes.
3. For the system of

(a) Draws, a full list of winning entrants and alternate winners, if any, including their name and address, the prize received and the value thereof, as well as receipts for the prizes delivered, duly signed by the winners. If not all prizes offered were delivered, there shall be a written explanation with the reasons for non-delivery.

(b) Instant Win Game Winners, a full list of entrants who won prizes in excess of one hundred dollars (\$100.00), including their name and address, the prize received and the value thereof, as well as receipts for the prizes delivered, duly signed by the winners, or other verified evidence of actual delivery. The promoter shall certify the total number of prizes of one hundred dollars (\$100.00) or less delivered and the receipts duly signed by the winners, or other verified evidence of actual delivery, if any. If not all prizes offered were delivered, there shall be a written explanation with the reasons for non-delivery.

The promoter shall be required to make the files and documents described above available to the Secretary, at his request.

#### **RULE 14: LIABILITY OF THE MEDIA**

Any person operating a radio or television station, movie theater, newspaper, magazine or any other media who insists on publishing the promotion of a sweepstakes after a cancellation or suspension order has been issued by the Secretary and after having received notice thereof shall commit a breach of these Regulations.

## **RULE 15: SUPPLEMENTARY PROVISIONS**

The acts and activities not included in the provisions hereof shall be governed by the Deceptive Practices and Advertising Regulations, effective, and other regulations and laws under the Department's authority, as applicable.

## **RULE 16: PENALTIES**

The Secretary is authorized, upon prior notice, to impose and collect fines of up to the maximum permitted by Act No. 5 of April 23, 1973, as amended, per violation, for any breach of the provisions of these Regulations or of the orders and resolutions issued thereunder. Such penalties shall not deprive entrants of the right to seek damages under the regulations or laws under the authority of the Department. Furthermore, when the nature of the breach of these Regulations or the laws authorizing it warrant it, the Secretary may bring a criminal action against the offender.

## **RULE 17: QUALIFICATION**

If any provision of these Regulations is held to be unconstitutional by a court of competent jurisdiction, such determination shall not affect or invalidate the rest of the Regulations, but the effect thereof shall be limited to the portion, section, paragraph or clause held to be unconstitutional.

## **RULE 18: REPEALING PROVISION**

The Sweepstakes Regulations filed with the State Department on January 21, 2004, File Number 6754, are hereby repealed.

**RULE 19: INTERIM PROVISION**

Any action pending prior to the effective date of these regulations shall be determined in accordance with Regulation Number 6754.

**RULE 20: EFFECTIVE DATE**

These Regulations will become effective thirty (30) days after filing thereof with the Office of the Secretary of State, pursuant to the provisions in Act No. 170 of August 12, 1988, as amended.

San Juan, Puerto Rico, October 27, 2009.



Secretary

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