

PUERTO RICO



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1. Case Law	<i>El Nuevo Día , Inc. vs. Puerto Rico Department of Consumer Affairs, et al</i> , Civil No. 00-2631 (JAG)
Topic:	First Amendment / Commercial Free Speech / Advertising/ Reg. 4339
Who:	US District Court for the District of Puerto Rico (Hon. Jay A. García-Gregory)
Where:	Puerto Rico (PR)
When:	April 2004.
What Happened:	<p>Rule 24 of the Puerto Rico Regulations Against Deceitful & Misleading Advertising--that required non resident advertisers to deposit a bond in the sum of US\$25,000 (valid for one year) with the Puerto Rico Department of Consumers Affairs prior to conducting any advertising in Puerto Rico – has been declared unconstitutional.</p> <p>Rule 24 also established an obligation on any local entity serving as intermediary for the non resident advertiser (i.e., Advertising agencies, Print and other media owners and Broadcasters, Publishers etc.) to make certain that the non resident advertiser had posted the bond prior to disseminating or publishing any advertisement for such client and to immediately cease any advertisement for said non resident advertiser should the bond become expired. Violation to any such stated obligations (by the intermediary or the non resident advertiser) could carry a fine up to US\$10,000 per violation.</p> <p>The case was filed by newspaper El Nuevo Día, attaining declaratory judgment which concluded that Rule 24 infringed both the newspaper, as well as the non resident advertisers’ first amendment rights under US Constitution.</p>
Comments:	<p>Rule 24 will not be enforced.</p> <p>This case law dissipates recurrent consultations from non resident advertisers (particularly online advertisers) who wished – without posting bond -- to direct their advertising to Puerto Rico consumers and most often than not, would decide from including Puerto Rico as a target audience and refrain from further direct forms of advertisement within the territory of the Commonwealth of Puerto Rico.</p>

2. Law	Law number 83: Amendment to the section 6 (n) of the Organic Law of Consumers Affairs Department
Topic:	Warranties / Other Documents to be signed by consumer
Who:	Puerto Rico Legislature
When:	March 27, 2004
Where:	Puerto Rico
What Happened:	Warranties and other receipts to be signed by the consumer at the time of purchase of a product or service must be provided to the Puerto Rico consumer in the Spanish language, unless the consumer opts for the English

	version. Violators risk fines for a maximum of \$10,000 per violation and every violation is considered as a new penalty. (3 LPRA 341q) The law orders the creation of a regulation to be enforced by the PR Department of Consumers Affairs.
Comments:	Regulation is under study and has not been enacted to date.

3. Regulation - Advisory Opinion	Puerto Rico Games of Chance - Interpretation by the Secretary of Consumers Affairs Department
Topic:	Corrective Advertising / Modification or cancellation of the terms and conditions of a games of chance
Who:	Secretary of Consumers Affairs Department
When:	June 2004 - restatement
Where:	Puerto Rico
What Happened:	<p>Cancellation by Sponsor of a games promotion: Cancellation or modification of a game/game rules/ prizes was stiffened by the 2004 Sweepstakes & Games of Chance Regulations. Any such changes by Sponsor once the game has commenced will require pre-approval from the Secretary of the Puerto Rico Consumers Affairs Department. Sponsor now has to request approval 10 days (instead of 5 days as per prior regulation) prior to effecting a change.</p> <p>Department of Consumers Affairs has recently restated that the Department shall be strict in requiring corrective advertisements and in having Sponsor bear the burden to establish that any such causes for modification/ cancellation of game/ game rules were beyond Sponsor's control.</p> <p>Disclosures to the consumer will now require three (3) forms of corrective advertisement in the form of (a) newspaper ad, (b) TV or radio announcement AND (c) corrective signage at store, in addition to an announcement using the form initially selected by Sponsor prior to game start for publication of rules (if different from any of the above three), unless otherwise exempted by the Secretary.</p>
Comments:	Sponsor minimizes the risk of imposition of fines if approval is requested and obtained and may as well obtain relief from some forms of corrective advertisement due to the circumstances of the case. Nonetheless, Sponsor must be able to establish that it took all reasonable precautions and the change is the result of circumstances beyond its control in order to completely walk away without a fine. Fines imposed can usually start at US\$700 up. Recurrent behaviour will affect the entry level fine imposed and the Department is entitled to impose fines up to US\$10,000.

4. Regulation - Advisory Opinion	Puerto Rico Sweepstakes & Games of Chance Regulation - Interpretation by the Secretary of the Department of Consumers Affairs
Topic:	Website terms and condition / Online or offline privacy policy/ Games of Chance/ Spanish language
Who:	Puerto Rico Department of Consumers Affairs
When:	October, 2004
Where:	Puerto Rico
What Happened:	The Secretary has interpreted the Sweepstakes and Games of Chance Regulations to require that any and all website term & conditions and/or privacy policy (online / offline) be available in the Spanish language (in addition to Sponsor's choice of language) when reference is made to these as part of the official rules of a game of chance , if Puerto Rico residents are

	eligible to enter the game.
Comments:	Both the Puerto Rico Games of Chance Regulations as well as the Puerto Rico Regulations Against Deceitful & Misleading Advertisement require that advertisers /promoters clearly inform the use to be made of consumer's personal data and that consent is obtain for such use (s) prior to any form of personal data collection. A controversy stirring from an ill understanding of sponsor/ advertiser's policies may leave advertiser without the required consent. Translation of such terms and policies are recommended even when reference is not made of these within the body of official rules if advertiser wishes to enforce the same while targeting its advertisement / promotion to the Puerto Rico consumer.

5. Regulation - Advisory Opinion	Puerto Rico Sweepstakes & Games of Chance Regulation – Interpretation by the Secretary of the Department of Consumers Affairs
Topic:	Alternate Winners
Who:	Department Of Consumers Affairs (“DACO”)
When:	During 2004, at various stages after regulation became effective on March 2004
Where:	Puerto Rico.
What Happened:	DACO has interpreted various provisions of the <i>newly</i> enacted (enacted January 21, 2004; effective February 22, 2004) Sweepstakes & Games of Chance Regulation upon advisory opinions requested by Cabrera & Rico, as follows: ALTERNATE WINNERS: The obligation requiring official rules to include a method to select alternate winner applies to sweepstakes only; not to instant win promotions. Nonetheless, the Secretary's advisory opinion restates Rule __ of the regulation to require that Sponsor must ensure that major prize(s) in instant win promotions are awarded; major prize defined as that on which Sponsor has rested in advertisement to entice consumers to enter the game.
Comments:	Regulations require record keeping obligations to evidence vacant prizes and the efforts made to ensure they are awarded. Records must be kept for one year after promotion end date.

6. Regulation - Advisory Opinion	Puerto Rico Sweepstakes & Games of Chance Regulation – Interpretation by the Secretary of the Department of Consumers Affairs
Topic:	In store entry / Consideration
Who:	Department Of Consumers Affairs (“DACO”)
When:	During 2004, at various stages after regulation became effective on March 2004.
Where:	Puerto Rico
What Happened:	DACO has interpreted another provision of the <i>newly</i> enacted (enacted January 21, 2004; effective February 22, 2004) Sweepstakes & Games of Chance Regulation upon advisory opinions requested by Cabrera & Rico, as follows: IN STORE PROMOTIONS: Promotions requiring store visit to enter a game will be deemed consideration UNLESS Sponsor provides an alternate method to enter the game without store visit.
Comments:	The regulation states that entering a store to participate in a game promotion will not be deemed consideration if an alternate method to enter OR read the rules is provided. The DACO has recently interpreted the requirement to mean that alternate form of entry outside the store must be had and rules must also be available at such other point of entry.

7. Regulation - Advisory Opinion	Puerto Rico Sweepstakes & Games of Chance Regulation - Interpretation by the Secretary of the Department of Consumers Affairs
Topic:	Games of chance promoted exclusively in print magazines
Who:	Department Of Consumers Affairs ("DACO")
When:	During 2004, at various stages after regulation became effective on March 2004
Where:	Puerto Rico.
What Happened:	<p>Recent interpretation by Secretary of an existing provision per Cabrera & Rico's petition opens the door to games promoted exclusively in print magazines originating with non resident sponsors.</p> <p>Existing Games of Chance regulation exempts non local sponsors promoting a game <u>exclusively</u> on-pack from the requirement of posting rules in Spanish as otherwise required by this regulation. The exemption recognized for non resident sponsor for on-pack promotions has now been extended to non resident sponsors exclusively promoting their game in a non-Spanish speaking print magazine.</p> <p>This exemption is not available to Puerto Rico sponsors (resident promoter) publishing magazines in English or other non-Spanish language.</p> <p>The exemption does not apply either to non resident sponsors (on pack or print magazine) when they team up with a local sponsor to conduct/promote the game or when entry is had or promoted outside the print magazine.</p>
Comments:	The exemption has not been interpreted to extend to online advertisers/ online promotions / online magazines since the exception finds its justification in space considerations due to the media involved: on pack & print magazine.

8. Regulation - Advisory Opinion	Puerto Rico Sweepstakes & Games of Chance Regulation - Interpretation by the Secretary of the Department of Consumers Affairs
Topic:	Use of Notary Public vs. Independent Judging Organization to certify game proceedings
Who:	Department Of Consumers Affairs ("DACO")
When:	After regulation became effective on March 2004.
Where:	Puerto Rico
What Happened:	<p>DACO has interpreted various provisions of the <i>newly</i> enacted (enacted January 21, 2004; effective February 22, 2004) Sweepstakes & Games of Chance Regulation upon advisory opinions requested by Cabrera & Rico, as follows:</p> <p>AUTHENTICATING PROCEDURES: Non resident game Sponsors must authenticate rules prior to promotion start date before a notary public. Non resident game Sponsors must also certify seeding and other "secret code" proceedings involved in the determination or verification of winner, as well as drawing proceedings. Certification must be made before a local attorney-notary public or a notary in the state of origin of the non resident sponsor. Independent Judging Organizations may be used by non resident sponsors but its use will not exempt from regulation requirements unless the above stated stages and proceedings are also certified before notary public.</p>

Comments:	Please be advised that Puerto Rico notary publics are also attorneys by law and that Puerto Rico Notary Law imposes on a local notary certain obligations, among these, record keeping obligations that are different from the continental US notary. Please do consult with a local attorney for guidelines in the manner in which such proceeding should be certified.
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