

# *Sweepstakes Sponsors Reach Agreement with New York Attorney General to Stop Requiring Entrants to Waive “Do Not Call” Rights*

## EXECUTIVE SUMMARY

On May 3, 2005, the Office of the New York Attorney General (“AG”) announced a settlement with The Great Atlantic & Pacific Tea Company (“A&P”) and Kitchen Magic, Inc. that prohibits the companies from calling sweepstakes entrants whose telephone numbers are registered with a state or federal “Do Not Call” list.

## BACKGROUND

Consumers at participating A&P locations throughout the state were provided a chance to win a free Kitchen Magic “makeover.” To enter A&P’s sweepstakes, each consumer was required to complete an entry form that provided his or her name, address, and phone number.

## SWEEPSTAKES RULES

The official rules of the sweepstakes contained a provision stating that by entering the sweepstakes, each entrant authorized Kitchen Magic to call the phone number listed on the entry form, even if their phone numbers were registered with a “Do Not Call” registry. The entry form included similar language, but did not include the complete official rules of the sweepstakes.

## INVESTIGATION

The promotion came under investigation by the New York AG, which asserted that the promotion did not ade-

quately disclose the fact that, by entering the sweepstakes, consumers waived their rights under “Do Not Call” registry laws.

In an informal conversation with the New York AG, we learned that the AG would generally scrutinize any waiver of Do Not Call rights, particularly when such a waiver is not clearly disclosed. In this particular case, according to the New York AG, the waiver was buried in the official rules of the sweepstakes. In addition, we learned that another factor in this case was the fact that A&P was the subject of a prior New York AG investigation and settlement regarding a promotional sweepstakes.

## AGREEMENT

Under the settlement agreement, A&P and Kitchen Magic agreed to pay \$100,000 in fines and costs and are barred from:

- Using sweepstakes rules or entry forms that purport to permit calls to entrants whose telephone numbers are registered with a state or federal “Do Not Call” registry, other than for the purpose of notifying prize winners; or
- Calling phone numbers collected as part of a sweepstakes, except to notify prize winners.

### FOR MORE INFORMATION

Kelley Drye Collier Shannon's Advertising and Marketing practice group is on the forefront of developing marketing and advertising industry guidelines and regulations.

If you have any questions, or are interested in submitting a comment on your company's behalf, please feel free to contact one of our team members at (202) 342-8400 or via email:

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