

Musk Escapes One Sweepstakes Lawsuit, But Ends Up in Another

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Last month, Philadelphia's District Attorney sued Elon Musk over his political action committee's sweepstakes to award a \$1 million daily prize to swing-state voters who pledged to support the Constitution, alleging that the sweepstakes was an unlawful lottery. A Pennsylvania judge dismissed the case, but the arguments that Musk's team made during a hearing on November 4, 2024 have landed them in another lawsuit, which may be harder to fight.

The DA argued that in Pennsylvania (like other states), a promotion is an unlawful lottery if it includes three elements: "(1) a prize to be won; (2) a winner to be determined by chance; and (3) the payment of a consideration by the player." In our [previous post](#), we observed that the \$1 million clearly constitutes a prize and Musk had said that winners would be selected randomly, so it's hard to dispute the presence of the first two elements. The DA had a weak argument on the element of consideration, though.

Rather than focus on the element of consideration, Musk's lawyers made an unusual argument during the hearing, focusing on the element of chance: "The \$1 million recipients are not chosen by chance. We know exactly who will be announced as the \$1 million recipient today and tomorrow." In a new class action lawsuit, a plaintiff is contrasting that statement with Musk's claim that "we're gonna be awarding a million dollars, *randomly*, every day from now until the election" and other similar messages.

The lawsuit alleges that Musk and his PAC committed fraud, breach of contract, and violated the Texas Deceptive Trade Practices Act by advertising that eligible consumers had a chance to win \$1 million in a random drawing, "while simultaneously choosing winners based on selective, pre-determined criteria." It's too early to tell how this case will turn out, although we can anticipate some arguments that Musk's team will make, they may not escape this one as easily as they escaped the Pennsylvania suit.

This case presents an unusual fact pattern that most marketers won't find themselves in, but it does illustrate the importance of making sure that what you say about your promotion accurately reflects how the promotion is going to run. In more common fact patterns, we frequently see various teams working on different aspects of a promotion and saying slightly different things about how it works. It's important to ensure that all messages are consistent.