

HOSPITALITY AND TOURISM

INFORMATION MEMO

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Brackets, Brackets, Brackets: How to Avoid the Madness of Violating New York Law

As the calendar turns to March, many people begin anxiously awaiting the NCAA men's and women's basketball tournaments. This is also the time that some offices begin to round up participants for their bracket pools and businesses contemplate running promotions, contests or sweepstakes centered around the tournaments for their clients or customers. Though these types of pools and promotions appear to be common practice, they could result in violations of gambling, advertising or even criminal laws if done without careful consideration of applicable legal rules and restrictions.

At the outset, it is important to understand how New York law defines "gambling" and "lotteries," as operating either without a license can incur legal liability or even criminal penalties. An act constitutes gambling when a person stakes, or risks, something of value on the outcome of a contest of chance or a future event not under their control, under an agreement that they will receive something of value upon the happening or occurrence of a certain outcome. A lottery qualifies as an unlawful gambling scheme when a person agrees to pay something of value for chances to win another thing of value as a prize, and where the designated winner is selected by a method outside the player's control, like a drawing or random selection.

In brief, there are three elements to these kinds of contests, pools or promotions that can create legal liability for the person or business: consideration given for participation, the winner is determined by chance and a prize that has value. Sufficiently eliminating one (or more) of these elements can help ensure your bracket pool complies with New York law and results in a promotion that engages with employees or customers without creating additional risk for your business.

Although bracket pools may appear like a game of skill—selecting from a group of 68 schools the teams that will win multiple games through a tournament certainly isn't easy—such pools are games of chance because the outcome of each such game is dependent on factors completely outside of the participant's control. Knowledge of a team's statistics and general performance are generally necessary for any successful bracket pool winner, but they are not enough to transform what is ultimately a game of chance. Indeed, we would not see "Cinderella" teams making a run through the tournament if there was not chance involved. As such, businesses may seek to modify how a winner is selected to avoid violating New York law.

Alternatively, organizers of such pools may consider eliminating consideration. Allowing employees or customers to complete a bracket for free, whether or not a prize or benefit is given to the winner, can be a way to take advantage of the exciting environment surrounding the tournament while not unwittingly conducting or promoting unlicensed gambling. Similarly, the bracket pool may not offer a prize, however, eliminating this element often defeats the purpose for most businesses seeking to offer this kind of promotion.

These are just a few issues businesses should be aware of when running a bracket pool or contest. If you intend to host a bracket-making promotion that does not eliminate one of the aforementioned elements of gambling, or to sell goods and services, there are additional and extensive regulations to be aware of. These requirements may include the posting of official rules, conspicuous postings, registration with the New York Department of State, bonding and various other reporting requirements.

Additionally, if you are considering promoting your business through a bracket pool, you will want to remember that “March Madness” (as well as several other related terms, like “Final Four,” “Elite Eight,” and “the Big Dance”) is a registered trademark of the NCAA.

If you have any questions about your business’s promotion or any of the other information contained in this memo, please contact [Jeffrey Gleason](#) or any other member of Bond’s [hospitality and tourism practice](#).

