

BOY SCOUTS OF AMERICA

Boys' Life Cybersearch Sweepstakes

Challenger: Children's Advertising Review Unit
Product Type: Sweepstakes
Issues: Disclosures
Disposition: Modified

- **Advertisers should recognize that children may have unrealistic expectations about the chances of winning a sweepstakes or contest or inflated expectations of the prize(s) to be won. Therefore the likelihood of winning should be clearly disclosed in language readily understandable to the child audience.**

Basis of Inquiry:

An advertisement for the Boys' Life Cybersearch Sweepstakes (the "Sweepstakes") appeared in Boys' Life magazine, published by Boy Scouts of America (the "BSA" or the "Advertiser"). This advertisement came to the attention of the Children's Advertising Review Unit of the Council of Better Business Bureaus ("CARU") through its routine monitoring of advertising directed to children.

The Advertisement

At the top of the full-page advertisement, it states in large, bold print,

The Ultimate Scouting Prize Could Be Yours!

Next to this, in slightly smaller, but still large print, it states,

Cyber Search Mega Contest

Below this, appears the following:

Enter now for your chance to win a \$100 Gift Card to the Boy Scouts of America Official Retail Store! Enter all month to increase your chances of winning! Submit your name and email address—it's MEGA Easy! Visit boyslife.org/cybersearch for official rules and to enter.

To the right of this information is a small photo of children hiking. Above the photo it states,

Perfect Gift for any Scout.

To the right of this photo it states,

Enter to Win! Boyslife.org/cybersearch.

At the very bottom of the page, in tiny white print it states,

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No purchase necessary. Many will enter, one will win a \$100 Gift Card...

The Website

Children who go to the website address given in the print advertisement see a page headed,

Cybersearch Mega Contest. Enter Now to Win This Week's Prize.

Below this it reads,

Welcome to the Cyber Search Mega Contest! BSA Gift Card. Enter below for your chance to win a \$100 gift card to the Boy Scouts of America official retail store! Good Luck!

The website then informs visitors how often children can enter, how the winners are chosen and what prize entrants can win (a \$100 gift card). Just above where children can enter it states,

Don't forget to come back tomorrow for another chance to win!

Kids can then enter by giving a first name and email address. There is no disclosure for odds of winning on this web page. There is a link to the Official Rules in the section that explains how the winners are chosen. Only if children click on the link to the Official rules can they find out what their chance of winning the sweepstakes is.

CARU's Concerns:

CARU questions whether the likelihood of winning is clearly disclosed in the print advertisement as well as on the website as required by *CARU's Self-Regulatory Program for Children's Advertising* (the "Guidelines").

Advertiser's Position:

The Advertiser stated that it respectfully disagrees that the advertising at issue runs afoul of the CARU Guidelines because it believes that the odds of winning were communicated in the print ad—in a form that matched (almost to a word) CARU's recommended phrasing (i.e., "Many will enter, one will win..."). The BSA also asserted that the necessary disclosures were made clear in the Sweepstakes' Official Rules, which were accessible from the online entry page with one mouse click.

The Advertiser maintained that the Guidelines do not mandate where or in what form the odds of winning should be disclosed but instead give advertisers discretion to use such disclosures "where appropriate." The Advertiser asserted that in light of these circumstances and the fact that no one could enter the contest without visiting the online entry page, that the disclosures were sufficient and that contest entrants wouldn't be misled as to the odds of winning.

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Nevertheless, the BSA stated that out of an abundance of caution that it will begin prominently stating the odds of winning in all print ads and including a prominent odds-of-winning disclosure on contest entry webpages.

Relevant Guidelines:

The "Principles" section of the Guidelines states in pertinent part,

2. Advertising should be neither deceptive nor unfair, as these terms are applied under the Federal Trade Commission Act, to the children to whom it is directed.

Part I (a) of CARU's Guidelines state,

To ensure that advertising directed to children is not deceptive:

1. The "net impression" of the entire advertisement considering, among other things, the express and implied claims, any material omissions, and the overall format, must not be misleading to the children to whom it is directed.
2. Whether an advertisement leaves a misleading impression should be determined by assessing how reasonable children in the intended audience would interpret the message, taking into account their level of experience, sophistication, and maturity; limits on their cognitive abilities; and their ability to evaluate the advertising claims.

Section (c), "Material Disclosures and Disclaimers," states in pertinent part,

1. All disclosures and disclaimers material to children should be understandable to the children in the intended audience, taking into account their limited vocabularies and level of language skills...
2. These disclosures should be conspicuous in the advertising format and media used, *e.g.*, online, advertisers should make disclosures clear and proximate to, and in the same format (*i.e.*, audio or graphic) as, the claims to which they are related...

Section (f), "Premiums, Kids' Clubs, Sweepstakes and Contests," states in pertinent part,

1. Advertisers should recognize that their use of premiums, kids' clubs, contests and sweepstakes has the potential to enhance the appeal of their products to children.
2. Advertisers should take special care in using these kinds of promotions to guard against exploiting children's immaturity.

(iii) Sweepstakes and Contests

- a. Advertisers should recognize that children may have unrealistic expectations about the chances of winning a sweepstakes or contest or inflated expectations of the prize(s) to be won.

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d. The likelihood of winning should be clearly disclosed in language readily understandable to the child audience. Disclosures such as, “Many will enter, a few will win.” should be used, where appropriate. (Emphasis added.)

Decision:

As part of its mission to ensure the accuracy and fairness of advertising targeting children, CARU is especially sensitive to children’s inherent vulnerabilities. CARU recognizes that sweepstakes have the potential to enhance the appeal of products to children. As such, special care should be taken when using sweepstakes to guard against exploiting children’s immaturity.¹

The CARU Guidelines, therefore, in addition to requiring that advertising be truthful, accurate and not deceptive, specifically require that the likelihood of winning must be clearly disclosed, in language readily understandable to the child audience. Disclosures such as “Many will enter, few will win.” should be used, where appropriate.²

In this case, in order to comply with CARU’s Guidelines, both the print advertisement for the Sweepstakes as well as the website where the Sweepstakes was hosted needed to clearly disclose the odds of winning to children. After carefully examining the evidence, CARU determined that neither had adequate disclosures.

Print Advertising

After carefully reviewing the print advertisement, CARU found that it did not comply with the Guidelines. Although the print advertisement for the Sweepstakes contained a disclosure stating, “many will enter, one will win...” it appeared at the bottom of the page in extremely difficult to read mice-type.

In advertising directed to children, CARU has held that disclosures and disclaimers material to children should be made clear and proximate to the claims to which they are related to avoid conveying unsupported messages.³ CARU has made clear that sweepstakes disclosures are material to children.⁴ “In print advertising, material disclosures should be made in type approximately equal in size and tone to sweepstakes claims...”⁵ Here, because the disclosures were located far from the claim, at the bottom of the page, and in nearly impossible to read, tiny

¹ The Guidelines, Part I: General Guidelines (f) Premiums, Kids’ Clubs, Sweepstakes and Contests.

² The Guidelines, Part I: General Guidelines (f), Premiums, Kids’ Clubs, Sweepstakes and Contests, iii, d.

³ The Upper Deck Company (Ultimate Football Dream Trip Sweepstakes), Report #4735 , *NAD/CARU Case Reports* (October 2007); Major League Baseball Players’ Association (Bring the Game Home Sweepstakes) Report #4537 *NAD/CARU Case Reports* (August 2006) Interactive Media Marketing (www.MileyWorld.com), Report #4788, *NAD/CARU Case Reports* (January 2008).

⁴ Id at 3.

⁵ Major League Baseball Players’ Association (Bring the Game Home Sweepstakes) Report #4537 *NAD/CARU Case Reports* (August 2006).

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print, CARU determined that these disclosures did not meet its requirements.⁶ It found that both the lack of proximity as well as the fact that it was difficult to read made it less likely that children would be able to see it.

The Advertiser argued that its disclosures were adequate because it used the proper phrasing that CARU recommends. The BSA also contended that the CARU Guidelines do not mandate where or in what form the odds of winning should be disclosed and instead give advertisers discretion to use such disclosures "where appropriate." However, while CARU does allow advertisers some discretion in creating campaigns, the CARU Guidelines require that disclosures pertinent to the children to whom an advertisement is directed be made in a manner that will be easily seen and understood by the child audience. Specifically, the Guidelines require that disclosures must be conspicuous in the advertising format and media used.⁷ For print advertising, as stated above, CARU has found that the disclosures should be made in close proximity to the claims to which they are related.⁸ Therefore, CARU determined that the disclosure in the print ad was not conspicuous and therefore in violation of the Guidelines.

The Advertiser also contended that the print ad did not need disclosures since children could not enter the contest without visiting the website where, they argued, the disclosures were sufficient. However, CARU disagreed because it has long held that a child's first contact with a product or is generally the advertisement itself and the fact that any confusion may be cleared up at a later time does not cure a misleading advertisement.⁹

Accordingly, CARU determined that the disclosure in the print ad was not conspicuous and therefore in violation of the Guidelines.

The Website

After carefully reviewing the website, CARU determined that it too did not comply with the Guidelines. CARU considered, but did not agree with the Advertiser's contention that the Guidelines do not mandate where disclosures should be placed. The Guidelines clearly state,

... online, advertisers should make disclosures clear and proximate to, and in the same format (*i.e.*, audio or graphic) as, the claims to which they are related...

The website, where the Sweepstakes was hosted, did not contain a proximate disclosure revealing the odds of winning. On the web page that described the Sweepstakes and where

⁶ The Upper Deck Company (Ultimate Football Dream Trip Sweepstakes), Report #4735, *NAD/CARU Case Reports* (October 2007); Major League Baseball Players' Association (Bring the Game Home Sweepstakes) Report #4537 *NAD/CARU Case Reports* (August 2006)

⁷ The Guidelines, Part I: General Guidelines (c) Disclosures and Disclaimers, Section 2.

⁸ The Upper Deck Company (Ultimate Football Dream Trip Sweepstakes), Report #4735, *NAD/CARU Case Reports* (October 2007); Major League Baseball Players' Association (Bring the Game Home Sweepstakes) Report #4537 *NAD/CARU Case Reports* (August 2006)

⁹ Marc Ecko Enterprises (Red Phranz-Phavorite Sneakers) Case #4980, *NAD/CARU Case Reports* (July 2009), Play Along/Cheetah Girls Singing Doll, Case #4768, *NAD/CARU Case Reports* (December 2007); MGA Entertainment/Bratz Big Babies, Case #4489, *NAD/CARU Case Reports* (May 2006).

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children could enter, there was no disclosure about the odds of winning. Instead, in order to ascertain the odds of winning, children would have had to actively seek them out by wading in and clicking through to another page on the site to where the Sweepstakes' Official Rules were located.

On websites, CARU has held that disclosures must be located immediately adjacent to the promotional copy.¹⁰ It is not sufficient to place a disclosure related to a claim in an area of a website that is can only reached by having to click through to another page. It is the promotional or advertising copy about entering the sweepstakes that entices children to enter and it is near such copy that the chances of winning and the prizes must be clearly explained. Many children, invariably, will not take the time to click through a website to find out the details. In this case, children are able to enter the Sweepstakes without having a clear idea of the chances of winning. Therefore, in order to comply with the Guidelines, a sweepstakes like the one here must set up the online registration process so that children will automatically view a precise description of the chances of winning before they are able to enter.¹¹

CARU recommended that future sweepstakes advertising provide the requisite disclosures in conspicuous form in all media and include a disclosure at the point of entry on websites.

Conclusion:

CARU determined that the odds of winning were not clear and understandable to a child audience in either the print advertisement or the website at issue.

CARU is pleased that BSA agreed to implement the recommended modifications in order to conspicuously disclose the likelihood of winning. By doing so, the Advertiser is promoting greater understanding and clarity for the child audience.

Advertiser's Statement:

The BSA stated that it respects CARU's conclusions and that going forward it will use its best efforts to ensure that CARU's recommended odds-of-winning disclosures are clearly and conspicuously displayed in print and online advertising for the Cybersearch Sweepstakes.

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¹⁰ Kraft Foods Global, LLC (Lunchables Never Be Bored Again Sweepstakes), #5534, *NAD/CARU Case Reports*, (December 2012); WM. Wrigley Jr. Company (Juicy Fruit "Gotta Have Sweet, Gotta Have That" Sweepstakes), #3954, *NAD/CARU Case Reports*, (September 2002); Kraft Foods/ Kraft "Cheesiest Kids" Contest, #4404, *NAD/CARU Case Reports*, (October 2005)

¹¹ Kraft Foods Global, LLC (Lunchables Never Be Bored Again Sweepstakes), #5534, *NAD/CARU Case Reports*, (December 2012)