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Google Modifies Ad Policy to Benefit Daily Fantasy Sports and Lottery Couriers

Google has set the stage for a transformative change slated for July 15, 2024, providing a roadmap to extend Google Ads to daily fantasy sports (“DFS”) operators and lottery courier services across numerous U.S. states. A significant shift in the search engine’s Google Ads gambling and games policy, this move is indicative of the company’s responsiveness to the evolving legal landscape surrounding online gaming and lottery courier services. Industry stakeholders must navigate this new advertising landscape mindfully, seizing its potential within regulatory bounds. Legal advice and assistance may be needed to address the new policies and understand the new Google environment.

Google announced that it would permit these businesses to advertise on a state-by-state basis.

- **Approved for DFS Advertising:** Alaska, California, Florida, Georgia, Kentucky, Minnesota, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, West Virginia, Wisconsin, and Wyoming.
- **Approved for Lottery Courier Advertising:** Alaska, Arkansas, Colorado, District of Columbia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wyoming.

If advertisers are targeting their ads in a state that does not require a license to conduct DFS or lottery courier service, they must be licensed in at least one other U.S. state that mandates such a license.

THE LEGAL CONTEXT OF THE UPDATED GOOGLE ADS POLICY

Usually circumspect when it comes to gambling-related content, Google’s policy update marks a notable departure. Traditionally, its stringent restrictions limited advertising to state-run lotteries and horse racing only. The historical context here is important as this shift from Google’s previously conservative policy marks a wider change in the digital advertising of gaming activities. Now, licensed lottery courier services will be able to market themselves through Google Ads in 40 states, excluding California due to specific state restrictions. The revised guidelines correspond with the expanding endorsement and enactment of governance over online gaming and

lottery operations. Nonetheless, this update enforces rigorous procedural rules and criteria for advertising compliance, encompassing adherence to both individual state regulations and the certification processes established by Google.

This paradigm shift in Google's policy echoes their latest requirements for advertisers, who are compelled to demonstrate compliance not just through licensing but also through the integrity of their ad content and search positioning efforts, reflecting a commitment to consumer trust and regulatory adherence.

DAILY FANTASY SPORTS ADVERTISING: A NEW PLAYING FIELD

On the DFS front, Google's policy expansion allows operators to advertise in 17 states, including jurisdictions where online sports betting remains unlegislated. DFS operators in states which currently do not permit online sports betting will remain at liberty to run Google ads. This reflects Google's nuanced approach to advertising within the gaming industry, ensuring that ads from entities that have met state-imposed standards are available to users. DFS providers can enter new markets at the rollout, subject to regulatory compliance, including state licensing. In states without such licensing requirements, operators must nonetheless hold a valid license from another state that does enforce scrutiny of operators, underscoring Google's effort in promoting only legitimate, reputable services.

LOTTERY COURIER ADVERTISING: RIDING THE WAVE OF LEGALIZATION

Entities such as Jackpocket and Lotto.com, acting as intermediaries, can now increase their visibility and customer base through Google Ads. Among other recent developments, DraftKings' recent acquisition of Jackpocket for \$750 million showcases the growing economic significance of lottery courier services. This growing market, while gaining popularity for convenience, is also varied in acceptance across states; advertisers must navigate diverse regulations and be keenly aware of states like California, where the State lottery commission has expressed restrictions and presently takes a dim view of courier operations.

UNDERSTANDING COMPLIANCE: STANDING AT THE GATE OF CERTIFICATION

Google's guidelines mandate advertisers provide evidence of all aspects of their operation, from licensing to customer data protection and legal compliance. Certification thus becomes synonymous with service integrity, with Google's policy now establishing this as a prerequisite. To synchronize with this directive, advertisers must:

- Hold an official license in one state, considering the dynamics of interstate variances in regulation.
- Target ads with precision, respecting the complexities of state-specific legal frameworks.
- Engage diligently with Google's certification process, indicative of an advertiser's adherence to compliance and transparency.

Advertisers seeking certification need to demonstrate compliance with rigorous legal standards, including the authentication of tickets and adherence to regulations. The process calls for delivering not just proof of licensing where required, but also extensive details pertaining to their business operations. The intent behind this comprehensive evaluation is to safeguard consumers by preventing untrustworthy services from gaining approval to advertise.

It will be particularly interesting to understand how Google enforces its "licensing" requirement for vendors, such as marketing affiliates, which promote lottery/fantasy sports services indirectly. Unlike B2C fantasy sports operators or couriers, these B2B entities traditionally not providing consumer-facing services may not be subject to the same state licensing demands, yet they must still navigate the intricacies of Google's policy in their marketing efforts.

IMPLICATIONS FOR ADVERTISERS: A FORWARD-LOOKING APPROACH

In navigating Google's updated advertising framework, adherence to its detailed certification process is paramount to successful marketing. A failure to meet Google's more robust standards could lead to advertising restrictions on its platform and related services—underscoring the need for meticulous strategy alignment and transparent operations.

The alterations to Google’s policy demand substantial attention to detail and legal compliance. These policy changes necessitate careful scrutiny and a proactive stance from advertisers to ensure alignment with new advertising avenues. On July 15, 2024, Google’s updated advertising policies will come into effect, after which the related policy page will be updated to reflect these changes.

Google’s revisions to its policies underscore the company’s pragmatic response to the dynamic realm of Internet-based lottery-related and gaming services. Notably, Google’s decision enables lottery courier advertising in a majority of states, acknowledging the sector’s growth. It is highly likely that other social media platforms will soon follow suit, thereby setting new standards for these business to adhere to if they want to take advantage of these powerful tools.

Blank Rome’s Gaming group is prepared to guide clients through these changes to ensure compliance and advantageous market positioning. With experience in determining the necessity of licensure for B2B vendors amidst evolving regulations, we are equipped to support your business through this transition and beyond. For detailed information, advice on regulatory alignment, and strategies to best leverage this new advertising landscape, potential clients and existing partners are encouraged to reach out to our team of experienced legal professionals. Contact [Stephen D. Schrier](#), [Adam J. Landy](#), or another member of Blank Rome’s [Gaming](#) group.

Stephen D. Schrier
215.569.5651 | 609.750.2654
stephen.schrier@blankrome.com

Adam J. Landy
212.885.5585 | adam.landy@blankrome.com