

Help Note

Promotions with prizes



Regular CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcast Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or the RACC www.racc.co.uk for radio ads.

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the rules in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing as far as they relate to the subject discussed. They are based on past ASA Council decisions and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

1. General Code rules

1.1 The Code states:

Rule 1.3

“Marketing communications should be prepared with a sense of responsibility to consumers and to society”;

Rule 1.10

“Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it”;

Rule 3.1

“Marketing communications must not materially mislead or be likely to do so”

and

Rule 8.2

“Promoters must conduct their promotions equitably, promptly and efficiently and be seen to deal fairly and honourably with participants and potential participants. Promoters must avoid causing unnecessary disappointment.”

1.2 In addition, Rules 8.17 and 8.19-8.21.1 explain in detail many standard rules that are not mentioned in this Help Note but that apply to promotions with prizes;

1.3 This guidance supplements the Sales Promotion rules. It should not be viewed in isolation to the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing.

2. Legality

The Code states:

Background to the section on prize promotions and the law (Section 8)

“Promoters should take legal advice before embarking on promotions with prizes, including competitions, prize draws, instant win offers and premium promotions, to ensure that the mechanisms involved do not make them unlawful lotteries (see the Gambling Act 2005 in Great Britain or the Betting, Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (as amended) in Northern Ireland).”

2.1 From 1 September 2007, the Gambling Act 2005 is the main statute that governs lotteries in Great Britain. A lottery is defined as an arrangement persons are required to pay to enter and in which prizes are allocated to the entrants by a process relying wholly on chance or, for a draw with more than one stage, initially on chance. Lotteries are generally unlawful unless licensed by the Gambling Commission or they are a small or private lottery or part of the National Lottery;

2.2 A prize promotion will not be an unlawful lottery if participants are required neither to pay to claim a prize nor to pay for goods at a price that reflects the opportunity to participate. The Act’s definition of “payment” excludes expenses incurred, at the normal rate, by participants:

- sending a letter by ordinary post (first-class or second-class post and not requiring special arrangements for delivery);
- making a telephone call or
- using any other method of communication.

A promotion might nevertheless be rendered unlawful if, for example:

- the price of a promotional pack were higher than that of the non-promotional pack before, during or after the prize promotion;
- the quality or composition of the paid-for product or service were in some way reduced during the promotion or
- participants were required to pay more than the “normal rate” to claim their prizes;

2.3 A prize competition that requires payment to enter will not be an unlawful lottery if it requires entrants to exercise skill or judgment or to display knowledge such that it can reasonably be expected to prevent a “significant proportion” of people from participating or from receiving a prize. That is because a competition that does not involve some difficulty will be treated as a process that relies wholly on chance;

2.4 The Gambling Act does not apply to Northern Ireland. Instead, prize promoters in Northern Ireland are subject to the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended). The Order does not define a lottery. Nevertheless, case law under the old Lotteries and Amusements Act 1976 indicates that a prize promotion in Northern Ireland will become an unlawful lottery if all participants, or a substantial number of participants, are required to pay for a product or service to enter; the prize promotion would be an unlawful lottery even if the payment for the product or service is at its normal price;

2.5 Offering consumers a no-purchase necessary entry route will therefore still be required for chance-based promotions in Northern Ireland. In Great Britain, no-purchase necessary entry

routes will still be required if participants can enter by paying more than the normal price for the product or service; the no-purchase route must be publicised in such a way that it would be likely to come to the attention of each individual who considers participating;

2.6 Promoters are advised to take legal advice as stated in the Code.

3. Definitions: prize draws, prize competitions and premium promotions

3.1 For the purposes of this Help Note, a “prize draw” is a scheme in which prizes are allocated by chance but no charge is imposed to participate (see sections 2.3 and 10). The term includes “instant win” promotions, in which consumers get any winnings at once or know immediately what they have won and how to claim it without delay, unreasonable cost or administrative barriers. In traditional prize draws the winner is chosen at random from all valid entries. In “pre-selected winner” promotions, the promoter chooses the winner at random from all possible winners (usually before direct mailings, each bearing an individual number, are distributed) and only later determines whether that entry has been returned by the consumer. If it has, that entry is the winner. If it has not, that “winner” is void (a new winner is often then picked from all valid entries as in a traditional prize draw);

3.2 For the purposes of this Help Note, a “prize competition” is a scheme in which prizes are allocated on the basis of skill and for which a charge is often imposed or the purchase of goods or services required. Promoters usually require consumers to complete a tie-breaker so that the winner can be selected on the basis of skill; often they initially filter out entries by requiring consumers to answer one or more question first;

3.3 For the purposes of this Help Note, a “premium promotion” is a scheme in which participants qualify for the same gift, benefit or item irrespective of chance. Although it is not a promotion with a prize, consumers are often offered a free gift at the same time as entry to a prize draw.

4. General principles

4.1 Promoters should communicate in a manner that is clear and readily understandable by the intended audience;

4.2 Promoters should state accurately, unambiguously and completely all rules, entry instructions and other material terms of the promotion. In particular, the structure (or “mechanic”) of the promotion should be transparent from the promotional material;

4.3 Promoters should neither state or imply that a consumer has won a prize if they have not nor overstate a consumer’s chance of winning a prize;

4.4 Promoters should not apply unreasonable conditions to promotions with prizes;

4.5 Promoters should state clearly in a promotion that invites entry or contains an entry opportunity any conditions that must be satisfied before consumers can win prizes;

4.6 Promoters should not misrepresent the value, nature or availability of prizes;

4.7 Promoters should state clearly all requirements for entry including the dates by which entries must be mailed or received to be eligible to enter;

4.8 Promoters of prize draws should state clearly how consumers can enter without making a purchase (or other contribution) before such a purchase is made if those promotions are required by law to offer no-purchase entry routes;

4.9 Promoters should ensure that the source, origin and character of promotions with prizes is clear (see 11.5).

5. Implying consumers have won

The Code states:

Rule 8.19

“Promoters should not claim that consumers have won a prize if they have not...” and

Rule 8.20

“Promoters should not overstate consumers’ chances of winning prizes. If promoters include consumers who have not won prizes in lists of those who have won prizes, they should distinguish clearly between the two”.

5.1 Promoters should ensure that claims, particularly those that feature prominently in promotions with prizes, are either worded to reflect in full the point about the promotion that the promoter wishes to make or are suitably qualified so that consumers are not misled. Qualifying claims can expand on primary claims, or qualify them in other ways, but should not contradict the impression a consumer might get from reading in isolation the primary claim (see Help Note on Claims that Require Qualification);

5.1.1 For example, promoters often state in direct mailings “Mr X will definitely win the prize if he has and returns the winning entry. The qualifying part of that sentence (“if he has and returns the winning entry”) should be of similar prominence to the promise part of the sentence (“Mr X will definitely win the prize”);

5.2 If they include a consumer who has not won a prize in a list of those who have won prizes, promoters should distinguish clearly between those who have won and those who merely have a chance to win;

5.3 Promoters should not encourage consumers to transfer a seal from one place to another, match one number with another, check whether they have a certain symbol or use other devices that might involve consumers interacting with promotional material, if those are likely to confuse consumers into thinking that they have won a prize that they have not won;

5.4 Promoters should not describe prizes or prospective prize award ceremonies (or similar) in a way that either implies consumers have already won if they have not or overstates consumers’ chances of winning.

6. Distinguishing between prizes and gifts

The Code states:

Rule 8.19

“...The distinction between prizes and gifts should always be clear. Gifts offered to all or most consumers in a promotion should not be described as prizes. If promoters offer gifts to all or most consumers in addition to giving prizes to those who win, particular care is needed to avoid confusing the two. In such cases, it should be clear that consumers “qualify” for the gifts but have merely an opportunity to win the prizes. If promoters include a gift that consumers have qualified for in a list of other prizes, they should distinguish clearly between the two”.

6.1 Promoters should not present premium promotions as promotions with prizes. They should not refer to premiums, gifts, awards or other items available in a premium promotion as “prizes” and the distinction between prizes and gifts should always be clear to consumers. If promoters offer a gift to all or most entrants in addition to offering a prize to those who win, particular care is needed to avoid confusing the two: in such cases it should be clear that consumers “qualify” for the gift but have only an opportunity to win the prize;

6.2 If promoters include a gift that a consumer has qualified for in a list of other prizes, they should distinguish clearly between the two.

7. Implying consumers are luckier than they are

The Code states:

Rule 8.21

“Promoters should not claim that consumers are luckier than they are. They should not use terms such as “finalist” or “final stage” in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of promotions if they have not”.

7.1 Promoters should not state or imply that any one entry or category of entries is more likely to win than any other if it is not;

7.2 Promoters should not misuse terms such as “finalist” or “next stage” to imply that consumers have progressed, by chance or skill, to an advanced stage of the promotion if they have not; in particular, promoters should not use those terms when consumers have merely been offered entry to the promotion;

7.3 Similarly, promoters should not state or imply that consumers are lucky if that might lead consumers to think wrongly that they have progressed, by chance or skill, to an advanced stage of the promotion;

7.4 Promoters who use terms such as “last chance to enter”, either to inform consumers that the promotion is coming to an end or to indicate that the promotional material is among the final opportunities consumers have to enter, should ensure that their meaning is clear and not exaggerated; promoters who inform consumers of such information with terms like “final round” should take particular care not to imply that consumers have reached an advanced stage in the promotion if they have not.

8. Prizes and how to award them

8.1 Promoters should state the minimum number and nature of prizes. Promoters offering substantial numbers of prizes need give only an indication of their number (for example, “plus thousands of free meals available to be won”);

8.2 Promoters can justify withholding prizes only if consumers have not met clear criteria set out in the promotional rules or if promoters have told consumers at the outset that insufficient entries or entries of insufficient quality will lead to the withholding of prizes;

8.3 Promoters should take care when prizes are listed together to ensure that they do not imply that lesser prizes are of equal or greater value to more valuable prizes;

8.4 Promoters should state clearly the terms and conditions relating to any prize if it is to be received in instalments or if it may be shared among multiple winners;

8.5 Promoters of prize draws should ensure that prizes are awarded in accordance with the laws of chance and under the supervision of an independent observer. Instant win tickets, tokens or numbers should be allocated on a fair and random basis and verification should take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner;

8.6 Promoters of competitions where the selection of winning entries is open to subjective interpretation should appoint an independent judge, or a panel including one member who is independent of the competition’s promoters and intermediaries. Those appointed to act as judges should be competent to judge the subject matter of the competition; their full names should be made available on request.

9. Closing dates

9.1 Promoters should state clearly and prominently any entry deadlines and, where it is not obvious from the promotional material, the consequences of failing to meet such deadlines;

9.2 Promoters should not change the closing date for entry to promotions with prizes unless circumstances outside their reasonable control make it unavoidable. If they are changed, promoters should take all reasonable steps to ensure that consumers who participated within the original terms are not disadvantaged;

9.3 Promoters should not state or imply that consumers must respond by a specified date or within a specified time if they need not.

10. Free entry

10.1 If a promotion is required by law to have a no-purchase entry route, the promoters should, before consumers are likely to purchase, give clear instructions on how they can enter without purchasing;

10.2 If one is required, a free-entry route should be genuine and realistic; promoters should not discriminate against those who wish to take a “free-entry” route into a prize draw and conditions should not be applied to “free-entry” routes that cannot readily be met by consumers under normal circumstances;

10.3 Promoters who offer a separate entry device for those who wish to enter without buying should ensure that it is of such a size and in such a form as to be readily found, understood and used by consumers;

10.4 Promoters who offer the same entry device to those who wish to buy and enter and those who merely wish to enter should state that no purchase is necessary to enter the prize draw if the promotion is required by law to have a no-purchase entry route.

11. Other points

11.1 Promoters should not state or imply on envelopes that mailings are from an official source if they are not. Similarly, promoters should not state or imply on envelopes that mailings contain private information if they do not: claims such as “private and confidential” are likely to mislead as to the importance and status of the content of the mailings unless the content, which might principally consist of promotional material, contains information that the recipient is reasonably likely to consider private (for example, bank account information). More ambiguous claims on envelopes such as “official notice” could mislead if they are not immediately and prominently qualified to relate to the promotion on offer: for example, “official notice” on its own could be a problem but “official notice ... enter our holiday draw” should be acceptable. Promoters should take care when making claims that are visible through the windows of envelopes not to initially lead recipients into thinking something that is not true. (See Help Note on Claims on Envelopes);

11.2 Promoters should not misrepresent the areas in which promotions with prizes are being promoted; they should not imply, for example, that the winner will come from the UK if that might not be true;

11.3 Promoters should ensure that fake cheques, or similar, used to give consumers an indication of what they could win are not presented as real. They could, for example, print “sample” diagonally across such cheques;

11.4 Consumers should always be able to retain entry instructions and rules;

11.5 Promoters should state their full name and business address in a form that can be retained by consumers, unless that is obvious from the context. Publisher’s promotions in newspapers and magazines need not state the name and address if those can easily be found elsewhere in the publications.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404, or you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>. The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

April 2000
Revised: September 2010