

Compliance Report

Sales Promotion Survey 2008

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1 Summary

The ASA has undertaken this survey to determine the compliance rate of sales promotions with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).

The Compliance team assessed sales promotions that appeared in supermarkets, newspapers, magazines, and e-mails during April to May 2008. Of the 250 promotions assessed, 71 were collected from supermarkets in May. 100 were from e-mails captured between mid-May to mid-June. 37 were from magazine titles published in April and the remaining 42 were from newspapers between 21 April and 27 April. We have not included duplicates of promotions that we found more than once in the results of the survey.

Of the 250 promotions, 16 seemed to have breached the CAP Code, a compliance rate of 94%. We considered that 9 of the 100 e-mails (9%) breached the CAP Code, 6 of the 71 supermarket promotions (8%) breached the CAP Code, 1 of the 37 magazine promotions breached the CAP Code (3%) and none of the national press promotions breached the CAP Code. None of the 16 unacceptable promotions were subject of complaints to the ASA.

Of the total sample, premium promotions comprised 62%, prize draws and competitions 27%, time-limited discount promotions 8% and instant-win promotions represented 4%. Premium promotions contained 3 breaches, prize draws and competitions contained 12 breaches and 1 time-limited discount breached the Code. No instant-win promotion breached the Code.

We separated the breaches into “content” and “administration” breaches. We checked the content of 250 promotions against the Code; the compliance rate for content was 96%. To evaluate the administration of sales promotions, we randomly selected 22 promotions that had closed and contacted the promoters to ensure that the promotions had been administered in accordance with the Code. The compliance rate for administration was a disappointing 68%. They were problematic because evidence was not produced to demonstrate either that a reasonable estimate had been made to ensure the promoter could fulfil demand for a promotion or that a prize draw had been conducted under the supervision of an independent observer.

When a breach was identified, the Compliance team sought assurances from the promoter that future promotions would comply fully with the CAP Code and that it would consult the CAP Copy Advice team in future.

Although the compliance rate for the content of promotions was high, promoters must ensure that they administer their promotions properly. Both CAP and the ASA will continue to monitor the compliance of sales promotions and to work with the industry to improve the administration of promotions and their content.

2 Introduction

2.1 Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the CAP and BCAP Codes, which apply to the content of non-broadcast and broadcast marketing communications. The ASA is responsible for ensuring that the self-regulatory system works in the public interest. It achieves that by investigating complaints, identifying and resolving problems through research, and by promoting and enforcing high standards in marketing communications by ensuring that marketers observe the CAP and BCAP Codes.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. It represents advertisers, promoters and direct marketers, their agencies, the media and trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The Compliance team works to ensure that marketing communications comply with the CAP and BCAP Codes and with ASA adjudications. The team follows up ASA adjudications, monitors both broadcast and non-broadcast marketing communications and takes immediate action to ensure ads that breach the Codes are removed from the media. One of the team's objectives is to create a level playing field for marketers in each sector and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys (of which this is one) to assess compliance rates in particular industries, sectors or media. The surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA or CAP.

2.2 CAP Sales Promotion Rules

The CAP Code lays down the criteria for acceptable non-broadcast marketing communications and states that all marketing communications should be legal, decent, honest and truthful. Specific rules apply to sales promotions.

The purpose of the CAP Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the industry. All advertisements should be legal, decent, honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition.

The CAP Code applies to all non-broadcast media in the UK, ranging from advertisements in the press, direct mailings and on-pack sales promotions to roadside hoardings, SMS text messages and Internet pop-up and banner advertisements.

The Code's sales promotion clauses state that promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

Please note the sales promotions sampled during the survey were checked against CAP Code clauses before the Consumer Protection from Unfair Trading Regulation changes were introduced on 24 June 2008.

A list of clauses referred to in the report can be found in the Appendix. The full CAP Code can be viewed at, or downloaded from, www.cap.org.uk.

2.3 Sales Promotions Examined in the Survey

We examined prize draws, competitions, instant wins, and premium promotions featured on-pack or in e-mails, magazines or newspapers.

We included time-limited discount prices in the survey (such as 40% off all furniture this weekend) and mobile phone redemption schemes that featured free gifts. They could be found only in e-mails, newspapers and magazines.

2.3 Survey Objectives

The purpose of the survey was to:

- Assess compliance rates for a representative sample of sales promotions in the press, in consumer magazines, online and in supermarkets;
- Randomly select sales promotions whose closing dates had already passed and contact the promoter to obtain information to determine whether the promotions had been administered in accordance with the Code;
- Identify breaches of the CAP Code;
- Contact advertisers responsible for promotions that seemed to break the Code and obtain an assurance that future promotions would comply fully with the relevant clause in future; and
- Act as a deterrent to bad practice and an encouragement to good practice.

3 Methodology

3.1 Sample Method

The survey sample consisted of a representative selection of around 70 on-pack sales promotions from UK supermarkets in May 2008, 37 sales promotions in national magazines from April 2008, 42 sales promotions in newspapers from the week of 21 April to 27 April and 100 sales promotions in e-mails from between mid-May to mid-June.

In total, 250 promotions were assessed against the requirements of sales promotion section of the CAP Code.

The Compliance team assessed the promotions in two ways:

Firstly, we determined whether promotions in the sample contained breaches of the Code. Among other things (dependent on media), the team looked at whether free entry routes were clear, whether significant terms and conditions were visible before purchase, and whether “instant win” was the right way of describing promotions if consumers were not immediately aware of whether and what they had won. For e-mail, press or magazine sales promotions, we checked to see whether significant conditions were clear before entry, such as closing dates, location restrictions, age restrictions and how and when winners would be announced.

Second, we randomly selected about 22 promotions for which the closing dates had already passed and wrote to the promoters to ask them to demonstrate that they had administered the promotions correctly. That assessment sought to establish whether: promoters had made reasonable estimates of the likely response to a promotion; they had contingency plans to take into account a high response; they could make available a list of major prize winners; they had appointed an independent judge to assess entries open to subjective interpretation; and they had tried to ensure that prizes were awarded in accordance with the laws of chance and under the supervision of an independent observer.

3.2 Media Examined in the Survey

We checked for on-pack promotions in Asda, Tesco and Sainsbury's. We checked a random selection of e-mail promotions and we also checked a selection of newspapers:

- Daily Star
- Daily Mirror
- The Sun
- Daily Star Sunday
- Sunday Express
- The Independent on Sunday
- The Mail on Sunday
- The Observer

- The Sunday Telegraph
- The Sunday Times
- Metro
- The London Paper
- London Lite
- The Independent
- Daily Mail
- The Daily Telegraph

- Evening Standard
- Daily Express
- The Guardian
- News Of The World
- The People
- The Scotsman
- Sunday Mirror
- The Times

And a selection of magazines:

- Arena
- Bella
- Bizarre
- Chat
- Closer
- Company
- Easy Living
- Elle
- Empire
- Esquire
- Essentials
- Eve
- FHM
- Front
- Good Housekeeping
- GQ
- Grazia
- Heat
- Hello
- Ideal Home
- In Style
- Look
- Love It
- Marie Claire
- Match

- Max Power
- More
- New woman
- Now
- Nuts
- Ok
- Peoples Friend
- Pick Me Up
- Q
- Radio Times
- She
- Sky Magazine
- Stuff
- Take A Break
- That's life
- The Lady
- TV Times
- Vanity Fair Travel
- Vogue
- Weight Watchers
- What's on TV
- Woman's Weekly
- Yours
- Zest
- Zoo

4 Findings

4.1 Compliance Rate

The survey sought to establish the proportion of sales promotions appearing between April 2008 and June 2008 that complied with the CAP Code.

The Compliance team considered 250 ads, of which 16 (6%) breached the Code, a compliance rate of 94%.

4.2 Compliance by Media Type

This table identifies the number of breaches found in each medium:

Media	No. of ads	No. of breaches	Compliance rate of media
Press	42	0	100%
E-mail	100	9	91%
Packaging	71	6	92%
Magazine	37	1	97%

Over half the breaches were contained in e-mails, at 91%, the most problematic sector surveyed. We found no breaches in the press and only one in magazines. At 92%, compliance for on-pack promotions was lower but better than for e-mail.

4.3 Compliance by Sector

Sector	Number in sample	Problem Promotions	Compliance rate of sector
Computers and Telecommunications	9	0	100%
Drink	37	4	89%
Food	38	1	97%
Health & Beauty	10	1	90%
Holidays & Travel	38	1	97%
Household	17	1	86%
Leisure	33	2	94%
Motoring	3	0	100%
Retail	65	6	91%

In terms of promotions for drink products, the breaches were for both content and administration breaches and were unrelated to the alcoholic or non-alcoholic nature of the products. Three of the breaches were content-related: significant conditions were not included on the outer packaging. The final breach was administrative and occurred because the promoter could not demonstrate that a prize draw had been administered properly.

The promotions that breached the Code in the retail sector were a mixture of content and administration breaches and related to various promotions that featured the opportunity to win digital cameras or satellite navigation systems. Some were content breaches because significant conditions were not made clear before time of entry; others breached the Code because the promoter did not demonstrate that the prize draws had been independently observed.

4.4 Compliance by Promotion Technique

Promotion Technique	Number in sample	Problem Promotions	Compliance rate
Premium Promotions	154	3	98%
Prize Draws and Competitions	67	12	82%
Instant-win Promotions	9	0	100%
Time-limited Discount Promotions	20	1	95%
Total	250	16	94%

The Compliance team identified that the promotions breaching the CAP Code fell into four categories: premium promotions; prize draws and competitions; instant-win promotions; and time-limited discount promotions.

The most breaches were for prize draws and competitions. The 12 breaches gave that category a compliance rate of 82%, by far the lowest rate of compliance among the promotional techniques. We found no breaches among the admittedly small sample of instant-win promotions.

4.5 Breaches Identified by the Compliance team

4.5.1 Prize Draws and Competitions

We identified 67 prize draws and competitions (27% of the total sample).

A prize draw is a scheme in which prizes are allocated by chance but no charge is imposed or purchase is required to participate. In traditional prize draws the winner is chosen at random from all valid entries. 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 a purchase is 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 questions.

Of the 67 prize draws and competitions, 12 breached the Code requirements, a compliance rate of 82%. Three on-pack promotions breached clause 34.1(a), (c) and (f) (significant conditions for promotions). They did not state the closing dates on the outside of the packaging, in breach of clause 34.1(c), or did not

explain significant restrictions as required by clause 34.1(f). Significant terms and conditions should be specified clearly before entry (for example, any age restrictions, or geographical restrictions).

Two breached clause 34.1(c) because they did not give the closing date for submission of entries to a prize draw. Another breached clause 34.1(a), (c) and (f) because it did not specify the closing date or significant restrictions for a promotion to win one of two digital cameras.

Finally, six promotions, which were randomly selected to check for administration purposes, breached clause 35.7 because the promoters could not demonstrate that the prizes were awarded under the supervision of an independent observer.

4.5.2 Premium Promotions

The sample included a wide variety of premium promotions. In fact, premium promotions were the highest-represented promotional technique found in the survey with 154 in total, 62% of the entire sample. A premium promotion is a scheme in which participants qualify for the same gift, benefit or item irrespective of chance. Although not a promotion with a prize, consumers are often offered a free gift at the time of entry to a prize draw. Premium promotions include:

- voucher or token-collect schemes to receive promotional products, reduced prices for holidays or weekend breaks, free or cheaper entry to gyms or tourist attractions and the like;
- offers that require the consumer to send the promoter proof of purchase, and sometimes payment, in return for promotional goods;
- “money-off” coupons entitling the consumer to money off the next purchase of the product;
- “try me free” offers, whereby consumers can obtain a refund on the price of the product for not being completely satisfied, for providing the promoter with their opinion of the product or in return for completing a questionnaire;
- “free gift with product” offers in which the item can either be attached to the outside or found inside the product;
- newspaper front-page flashes whereby consumers can obtain a free gift by redeeming a voucher at a supermarket or by sending off a coupon;
- free gifts when subscribing to a magazine.

The compliance rate was very high: only three promotions breached the Code, a compliance rate of 98%.

Two of the promotions were identified as problematic from looking at the promotional literature alone. Both were on-pack promotions and in breach of clauses 34.1(a), (c) and (f) because the outside of the label did not state important terms and conditions for the promotion (the closing dates for receipt of

applications) or did not specify significant restrictions such as age to enter or the need to have access to the Internet.

The nature of the offers should have been made clear at point of sale, that is on the outside of the labels, because that could have influenced consumer's decision to participate in the promotion and buy the product.

The final promotion was an administration breach of clause 30.1 of the Code: the promoter was unable to demonstrate that it had made a reasonable estimate of the likely response or shown that it was capable of meeting that response.

4.5.3 Instant-win Promotions

We identified nine instant-win promotions (4% of the total sample), the smallest category to be evaluated as part of the survey.

Instant-win promotions are those in which consumers receive a prize at once or know immediately what they have won and how to claim it without delay, unreasonable cost or administrative barriers. In 2006, the ASA upheld complaints about a promotion that advised consumers that they could instantly win a pack of razors whereas they had to enter a promotional code from the packaging on a website to find out whether they had won. The ASA concluded that to claim that the promotion was an "instant win" was misleading, because consumers could not find out immediately from the packaging whether they had won a prize.

No instant-win promotion breached the Code, a compliance rate of 100%.

4.5.4 Time-limited Discount Promotions

We identified 20 promotions (8% of the total sample) that featured products at discounted prices for time-limited periods. One of the e-mail-based promotions breached clause 34.1(c) because it did not specify the closing date.

4.6 Content Breaches and Administration Breaches

Of the 16 sales promotions that breached the Code, 9 were content breaches identified from looking at the content of the promotional literature alone. For example, important terms and conditions were not stated on the outside of the pack or closing dates were missed out altogether.

The remaining 7, which we derived from a randomly selected sample of 22 to check for administration purposes, we identified as administration breaches. For example, the promoter could not demonstrate that prize draws were conducted under the supervision of an independent observer or show that it had made a

reasonable estimate of likely response to a promotion with a free gift and was capable of meeting that response.

The compliance rate for the content of promotions was 96%; the rate for the administration of promotions was a disappointing 68%.

Although the randomly chosen sample was small (only 22), 6 breaches resulted from the promoter's inability to demonstrate independence in the supervision of a prize draw or that the draw had taken place in accordance with the laws of chance. The final breach resulted from a promoter's inability to demonstrate that it had made a reasonable estimate of likely response to the promotion and that it was capable of meeting that response.

The results demonstrate that, although the content of promotions is relatively good, promoters must take more care to ensure they administer promotions properly. Importantly, they must have an independent observer supervising a prize draw and ensure that the draw is administered according to the laws of chance.

4.7 ASA Investigations and Complaints

Between April and mid-June 2008 the ASA published seven adjudications about sales promotions. The adjudications are attached at Appendix 4; the promotions were a mixture of premium promotions, instant-win promotions, prize promotions and time-limited discount promotions. None of those promotions were picked up during the survey.

The ASA does not receive many complaints about on-pack sales promotions. One reason could be that the Sales Promotion clauses are technical and it is not obviously apparent to consumers whether they have been breached. Consumers are unlikely to complain to the ASA about some of the problems identified by the Compliance team, notably promoters not ensuring that an independent observer supervised a prize draw or not ensuring that, when a competition was open to subjective interpretation, a judge was appointed who was independent of the promoter and its intermediaries.

5 Conclusions

The 94% compliance rate results from a high (96%) compliance for the content of sales promotions and a low (68%) compliance for the administration of sales promotions. The Compliance team is concerned by the number of promoters who did not demonstrate that prize draws were conducted under the supervision of an independent observer.

Of the 16 promotions that broke the Code, none attracted complaints to the ASA. They were all dealt with by the Compliance team: the promoters were contacted and asked to provide assurances that future promotions would be prepared and administered to comply fully with the Code's requirements.

Comparing the survey findings with those from the previous survey in 2003, the compliance rate has remained the same. But the previous survey did not include promotions in e-mails, newspapers and magazines. The problem remains however with the administration of promotions and the disappointing compliance rate of 68%.

The team will continue to monitor sales promotions across all media to ensure a higher level of compliance with the Code.

6 Pre-publication advice

Seeking advice from the CAP Copy Advice team is the best way to ensure that promotions do not break the CAP Code and promoters and advertisers are urged to use that service. The team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. Consult the team on 020 7492 2100 (telephone), 020 7242 3696 (fax) or e-mail copyadvice@cap.org.uk. The team responds to almost all written enquiries within 24 hours.

Also, promoters and advertisers, their agencies and the media can stay on the right side of the line by using AdviceOnline, an up-to-date database of advice that tells advertisers what they can and cannot do and links users to relevant Code clauses, Help Notes and past ASA decisions. CAP encourages users to subscribe to Update@CAP, its e-mail newsletter. Both services are free and available on www.cap.org.uk.

7 Appendices

Appendix 1

CAP Code: Sales Promotion Section

27.1 The sales promotion rules must be read in conjunction with the general rules, direct marketing rules and other specific rules, if relevant.

27.2 The sales promotion rules are designed primarily to protect the public but they also apply to trade promotions and incentive schemes and to the promotional elements of sponsorships. They regulate the nature and administration of promotional marketing techniques. Those techniques generally involve providing a range of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers. The rules do not apply to the routine, non-promotional, distribution of products or to product extensions, for example the suitability of one-off editorial supplements (be they in printed or electronic form) to newspapers and magazines.

27.3 Promoters are responsible for all aspects and all stages of promotions.

27.4 Promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

PROTECTION OF CONSUMERS, SAFETY AND SUITABILITY

28.1 Promoters should make all reasonable efforts to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. Literature accompanying promotional items should give any necessary warnings and any appropriate safety advice.

28.2 Promoters should make every effort to ensure that unsuitable or inappropriate material does not reach consumers. Promotions should not be socially undesirable to the audience addressed by encouraging excessive consumption or inappropriate use and should be designed and conducted in a way that respects the right of consumers to a reasonable degree of privacy and freedom from annoyance.

28.3 No promotion or promotional item should cause serious or widespread offence to the audience addressed.

CHILDREN

29.1 Special care should be taken when promotions are addressed to children (people under 16) or when products intended for adults may fall into the hands of children.

29.2 Alcoholic drinks should not feature in promotions directed at people under 18.

AVAILABILITY

30.1 Promoters should be able to demonstrate that they have made a reasonable estimate of likely response and that they were capable of meeting that response.

30.2 Phrases such as "subject to availability" do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.

30.3 Promoters should not encourage consumers to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited.

30.4 If promoters are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they should offer refunds or substitute products in accordance with clause 42.5a.

30.5 When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.

ADMINISTRATION

31.1 Promotions should be conducted under proper supervision and adequate resources should be made available to administer them. Promoters and intermediaries should not give consumers justifiable grounds for complaint.

31.2 Promoters should allow adequate time for each phase of the promotion: notifying the trade, distributing the goods, issuing rules if relevant, collecting wrappers and the like, judging and announcing results.

31.3 Promoters should normally fulfil applications within 30 days in accordance with 42.4 and refund money in accordance with 42.5a.

FREE OFFERS AND FREE TRIALS

32.1 A free offer may be conditional on the purchase of other items. Consumers' liability for costs should be made clear in all material featuring the offer. An offer should be described as free only if consumers pay no more than:

- a) the minimum, unavoidable cost of responding to the promotion, eg the current public rates of postage, the cost of telephoning up to and including the national rate or the minimum, unavoidable cost of sending an e-mail or SMS text message
- b) the true cost of freight or delivery
- c) the cost, including incidental expenses, of any travel involved if consumers collect the offer.

Promoters should not charge for packing, handling or administration.

This clause has been updated to conform to the Consumer Protection from Unfair Trading Regulations 2008. This clause does not apply to marketing communications that appear after 24 June 2008. See clause 32.5

32.2 Promoters must not try to recover their costs by reducing the quality or composition or by inflating the price of any product that must be bought as a pre-condition of obtaining the free item.

32.3 Promoters should not describe an individual element of a package as "free" if the cost of that element is included in the package price.

32.4 Promoters should not use the term "free trial" to describe "satisfaction or your money back" offers, "buy one get one free" offers or other offers where a non-refundable purchase is required. If appropriate, promoters should provide a cash refund, postal order or personal cheque promptly to free trial participants.

32.5 Consumers' liability for costs should be made clear in all material featuring "free" offers. An offer should be described as free only if consumers pay no more than:

- a) the minimum, unavoidable cost of responding to the promotion, eg the current public rates of postage, the cost of telephoning up to and including the national rate or the minimum, unavoidable cost of sending an e-mail or SMS text message
- b) the true cost of freight or delivery

c) the cost, including incidental expenses, of any travel involved if consumers collect the offer.

Promoters should not charge for packing, handling or administration

This clause has been updated to reflect the Consumer Protection from Unfair Trading Regulations 2008. This clause applies to marketing communications that appear after 24 June 2008. See clause 32.1

PRIZE PROMOTIONS AND THE LAW

(see CAP Help Note on Promotions with Prizes)

33.1

Applies up to 31 August 2007

Promotions with prizes including competitions, prize draws and instant win offers are subject to legal restrictions.

Applies from 1 September 2007

Promoters should take legal advice before embarking on promotions with prizes, including competitions, prize draws, instant win offers and premium-payment 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 in Northern Ireland).

33.2

Applies up to 31 August 2007

Promoters usually seek to avoid running illegal lotteries by running skill-based prize competitions (often using tiebreakers to identify the winners) or by offering free entry if the chance-based prize promotion might encourage purchase. Promoters should take legal advice before embarking on such promotions.

SIGNIFICANT CONDITIONS FOR PROMOTIONS

(see CAP Help Note on Promotions with Prizes)

34.1 Promotions should specify clearly before any purchase (or before or at the time of entry/application, if no purchase is required):

a) How to participate

Applies up to 31 August 2007

how to participate, including significant conditions and costs, and any other major factors reasonably likely to influence consumers' decisions or understanding about the promotion.

Applies from 1 September 2007

how to participate, including significant conditions and costs, and any other major factors reasonably likely to influence consumers' decisions or understanding about the promotion. If a promotion has a free entry route, for example if one is required by law, that route should be explained clearly.

b) Start date the start date, in any comparison referring to a special offer if the special offer has not yet begun

c) Closing date a prominent closing date, if applicable, for purchases and submissions of entries/claims. Prize promotions and promotions addressed to or targeted at children always need a closing date. Some others do not, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer), so long as they are and are stated to be "subject to availability"; promotions limited only by the availability of promotional packs (eg gifts with purchase, extra volume packs and reduced price packs); and loyalty schemes run on an open-ended basis. Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers. Promoters should state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers. Closing dates should not be changed unless circumstances outside the reasonable control of the promoter 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.

d) Proof of purchase

Applies up to 31 August 2007

any proof of purchase requirements. Prize promotions that might encourage, but do not require, purchase should state clearly that no purchase is necessary and should explain the free entry route.

Applies from 1 September 2007

any proof of purchase requirements.

e) Prizes the minimum number and nature of any prizes, if applicable. Promoters should state if prizes are to be awarded in instalments or are to be shared among recipients

f) Restrictions geographical, personal or technological restrictions such as location, age or the need to have access to the Internet. Promoters should state any need to obtain permission to enter from an adult or employer

g) Availability of promotional packs where it is not obvious, if there is likely to be a limitation on the availability of promotional packs in relation to a stated closing date of the offer

h) Promoter's name and address the promoter's full name and business address, unless this is obvious from the context. Promotions by newspapers and magazines in their publications need not state the name and address if those can easily be found elsewhere in the publication

Participants should be able to retain the above conditions or have easy access to them throughout the promotion. Advertisements for promotions should specify all of the significant conditions above that are applicable.

35.1 Promoters should not claim that consumers have won a prize if they have not. 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.

35.2 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.

35.3 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.

35.4 Promoters should not claim that consumers must respond by a specified date or within a specified time if they need not.

35.5 Complex rules should be avoided and only very exceptionally will it be considered acceptable to supplement conditions of entry with additional rules. If extra rules cannot be avoided, participants should be informed how to obtain them; the rules should contain nothing that could reasonably have influenced consumers against making a purchase or participating.

35.6 Withholding prizes can be justified only if participants 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.

This clause has been updated to conform to the Consumer Protection from Unfair Trading Regulations 2008. This clause does not apply to marketing communications that appear after 24 June 2008. See clause 35.10.

35.7 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.

35.8 Participants in instant win promotions should get their winnings at once or should know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers. Instant win tickets, tokens or numbers should be awarded 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.

35.9 Prize promotions should specify before or at the time of entry:

- a) any restriction on the number of entries
- b) whether or not a cash alternative can be substituted for any prize
- c) when prizewinners will receive their prizes if later than six weeks after the closing date
- d) how and when winners will be notified of results
- e) how and when winners and results will be announced. Promoters should either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners should not be compromised by the publication of excessively detailed personal information
- f) in a competition, ie a game of skill or judgement, the criteria for judging entries (eg the most apt and original tiebreaker). If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request
- g) if relevant, who owns any copyright in the entries
- h) if applicable, how entries will be returned by promoters
- i) any intention to use winners in post-event publicity

Participants should be able to retain the above conditions or have easy access to them throughout the promotion.

35.10 Marketers should award the prizes as described in their marketing communications or reasonable equivalents.

This clause has been updated to reflect the Consumer Protection from Unfair Trading Regulations 2008. This clause applies to marketing communications that appear after 24 June 2008. See clause 35.6

35.11 Marketers should not falsely claim or imply that the consumer has already won, will win, or will on doing a particular act win a prize (or other equivalent benefit) if the consumer must incur a cost to claim the prize (or other equivalent benefit) or if the prize (or other equivalent benefit) does not exist.

This clause has been included to reflect the Consumer Protection from Unfair Trading Regulations 2008. This clause applies to marketing communications that appear after 24 June 2008.

FRONT-PAGE FLASHES

(see CAP Help Note on Front-page Flashes)

36.1 Publishers announcing reader promotions on the front page or cover should ensure that consumers know whether they will be expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy the publication should appear on the front page or cover.

CHARITY-LINKED PROMOTIONS

(see CAP Help Note for Voluntary Sector Advertisers)

37.1 Promotions run by third parties (eg commercial companies) claiming that participation will benefit registered charities or causes should:

- a) name each charity or cause that will benefit and be able to show the ASA or CAP the formal agreement with those benefiting from the promotion
- b) if it is not a registered charity, define its nature and objectives
- c) specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated
- d) state if the promoter has imposed a limit on its contributions
- e) not limit consumers' contributions. If an amount is stated for each purchase, there should be no cut-off point for contributions. If a target total is stated, extra money collected should be given to the named charity or cause on the same basis as contributions below that level
- f) be able to show that targets set are realistic

g) not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product

h) if asked, make available to consumers a current or final total of contributions made

i) take particular care when appealing to children (see clause 47.4e).

TRADE INCENTIVES

38.1 Incentive schemes should be designed and implemented to take account of the interests of everyone involved and should not compromise the obligations of employees to give honest advice to consumers.

38.2 If promoters intend to ask for help from, or offer incentives to, another company's employees, they should require those employees to obtain their employer's permission before participating. Promoters should observe any procedures established by companies for their employees, including any rules for participating in promotions.

38.3 Incentive schemes should make clear to those benefiting that they may be responsible for paying tax.

39.1 Marketers should not claim that products are able to facilitate winning games of chance.

This clause has been included to reflect the Consumer Protection from Unfair Trading Regulations 2008. This clause applies to marketing communications that appear after 24 June 2008.

Appendix 2

ASA Adjudications

Abstract Games Ltd t/a Mediaprom

Number of complaints: 1

Date: 30 April 2008

Media: Insert

Sector: Leisure

Ad

A scratchcard insert, for a prize draw promotion, stated "WIN A FANTASTIC NISSAN QASHQAI OR A CASH ALTERNATIVE OF £15,000 CASH Reveal 4x £ symbols and you can claim the Nissan Qashqai or a cash amount See ticket back for details OVER £40,750 TO BE WON IN CARS AND PRIZES". Text on the back of the scratchcard stated "HOW TO CLAIM Reveal 4x £ symbols and you have won a Nissan Qashqai or a great cash amount! Scratch off your Card Number and call the Claims Hotline on 0906 661 3813* or claim by mobile, text the word DAILY to 84142** alternatively see rules for postal entries. Your Card Number refers to which prize you could claim. If you reveal 4 identical symbols you are instantly guaranteed a minimum cash amount of £5 and you may have also hit the jackpot of a brand new Nissan Qashqai". Small print stated "To claim by post write to the claim address including 30p for return postage requesting a Claim Number, please allow 28 days for delivery. No purchase necessary. Closing date 28 February."

Issue

1. The complainant challenged whether the ad was misleading, because the front of the scratchcard implied that, by uncovering four '£' symbols, he had won a car or a major cash prize.

The ASA challenged whether:

2. the ad distinguished clearly between cash awards available to most participants and prizes available to a lucky few and
3. the no purchase entry route was clearly explained.

The CAP Code: 6.1;7.1;34.1;35.1;35.2;35.3

Response

Mediaprom said they had obtained guidance from the CAP Copy Advice team and from PhonepayPlus before distributing the scratchcard. They said 10 million cards had been distributed and 95% had four matching symbols.

1. Mediaprom said the statement "Reveal 4 symbols and you can claim the Nissan Qashqai or a cash amount" was accurate. They said the back of the scratchcard stated "If you reveal 4 identical symbols you are instantly guaranteed a minimum of £5 and you may have also hit the jackpot of a brand new Nissan Qashqai". They said the complainant's point had not been raised by members of the public via their customer helpline.

2. Mediaprom said the card clearly and precisely listed the prizes and the relative quantities of each that could be claimed. They highlighted again that the reverse of the card stated "If you reveal 4 identical symbols you are instantly guaranteed a minimum of £5 and you may have also hit the jackpot of a brand new Nissan Qashqai". They said the card then stated again in the rules that "All other winning cards are worth a guaranteed five pounds". They believed that clearly distinguished between the awards and prizes available.

3. Mediaprom said the card stated clearly the three entry routes in a panel at the top of the reverse of the card; it stated that participants could "call the claims Hotline" or "claim by mobile, text the word ..." or "alternatively see rules for postal entries". They said the first line of the rules made clear how players could enter via post. They pointed out that the reference to postal entry was in the same type face and size as the other two entry mechanisms listed and therefore it held the same prominence.

Assessment

1. Upheld

The ASA noted the scratchcard was headlined "Win a fantastic Nissan Qashqai or a cash alternative of £15,000 cash" followed by "Reveal 4 x car symbols and you can claim the Nissan Qashqai or a cash amount". We considered those claims implied that participants who revealed four car symbols were guaranteed to win the car or a £15,000 cash prize. We considered the reverse of the scratchcard reinforced that impression with text in a grey panel at the top, which stated "Reveal 4 x car symbols and you have won a Nissan Qashqai or a great cash amount!"

We noted text below the grey panel stated "If you reveal 4 identical symbols you are instantly guaranteed a minimum cash amount of £5 and you may have also hit the jackpot of a brand new Nissan Qashqai" and the rules also stated "All other winning cards are worth a guaranteed five pounds" but we considered that did not sufficiently clarify the impression given by the previous claims, particularly on the front of the scratchcard, that all participants were guaranteed to win the car or a major cash prize.

We noted the CAP Copy Advice team had advised Mediaprom that the claim "You have won a Nissan Qashqai or a cash amount" should be amended to make clear that participants might only be entitled to a cash award or gift. We were concerned that Mediaprom had not adopted their suggested changes.

We considered that, because it implied that participants had won a car or a major cash prize if they revealed four symbols, the ad was likely to mislead.

On these points the ad breached CAP Code clauses 6.1 (Honesty), 7.1 (Truthfulness), 34.1 (Significant conditions for promotions), 35.2 and 35.3 (Other rules for prize promotions).

2. Upheld

We noted 95% of the 10 million scratchcards distributed had four symbols. We noted 138 cash prizes were available as well as the car and any other participants that revealed four symbols would receive £5 cash. We noted the claims on the front and the reverse of the leaflet did not make a distinction between the award or gift that was available to the majority of participants, i.e. the £5 cash, and the other 138 cash prizes. We noted that claiming via phone cost £1.50 a minute and calls were likely to last six minutes and claiming via text involved receiving six texts at a cost of £1.50 each. We noted, therefore, that participants who received the £5 award paid more than £5 in order to claim the cash if they used the phone or text entry routes.

We considered that, because the £5 cash was not a prize and was available to the vast majority of participants who revealed four symbols, it should have been distinguished clearly from the actual prizes consumers had the opportunity to win. We concluded that the ad was misleading and in breach of the Code.

On these points the ad breached CAP Code clauses 6.1 (Honesty), 7.1 (Truthfulness), 35.1, 35.2 and 35.3 (Other rules for prize promotions).

3. Upheld

We noted the reverse of the card stated, with equal prominence to the phone and text entry routes, "alternatively see rules for postal entries". However, we noted a box below that text stated "When you have your claim number please complete this card and send to ..." and included space for participants to complete their address details. We noted the explanation of how to obtain a claim number appeared in much smaller text in the rules of the promotion and stated "To claim by post write to the claim address including 30p for return postage requesting a claim number, please allow 28 days for delivery". We considered that readers could be confused by the difference between claiming a prize by post and obtaining a prize number through a no purchase route of entry. We noted the CAP Copy Advice team had advised Mediaprom that the no purchase route needed to be clearer but that Mediaprom had not adopted their suggested changes. Because the text about postal entries did not make sufficiently clear that it related to a no purchase route for obtaining a claim number, we concluded that the ad was likely to mislead.

On this point the ad breached CAP Code clauses 6.1 (Honesty), 7.1 (Truthfulness), 34.1 (Significant conditions for promotions).

Action

We told Mediaprom to withdraw the scratchcard. We told them to ensure that they did not overstate consumers' chances of winning, to distinguish clearly between gifts offered to most participants and prizes available to a few, and to explain clearly the no purchase entry route in future. We noted Mediaprom had breached the Code on several occasions in the past for similar reasons and that they had not followed the Copy Advice given. We told CAP to inform its media members of the problem with Mediaprom.

easyJet Airline Co Ltd

Number of complaints: 1

Date: 11 June 2008

Media: Brochure

Sector: Holidays and travel

Ad

An ad for scratchcards in easyJets in-flight magazine stated "Funcards - WIN £20,000 with easyJet today ... There are three limited edition designs exclusive to easyJet to collect. Thousands of other cash prizes are also up for grabs with a 1 in 4.27 chance of winning. With £20,000 to be won ... what are you waiting for? Funcards available on all easyJet flights. (Not available on Swiss-based aircraft with flight numbers 1000-2599. No Purchase Necessary)".

Issue

1. A passenger believed the claim "Thousands of other cash prizes are also up for grabs" was misleading, because he understood that smaller prizes were not 'cash' but vouchers redeemable against goods from the easyJet on-board kiosk.
2. The ASA challenged whether there was a "No Purchase Necessary" route as claimed.

The CAP Code: 7.1;27.4;34.1e;34.1a

Response

1. EasyJet explained that the claim "Thousands of other cash prizes are also up for grabs" was intended to convey to participants that thousands of pounds worth of prizes were available although they accepted that that was not completely clear. They said they would review the claim before running similar promotions in future. They submitted details of the nature and number of prizes attached to the scratchcard for the ASAs attention.

2. EasyJet said there was a "no purchase necessary" route of entry and both the ad and the terms and conditions set out on the front of the scratchcard referred to it. They said the precise method for free entry should have been detailed on the EasyJet website, but acknowledged that that had not been the case. They said they would amend the structure of the promotion to include a more transparent free entry route in future.

Assessment

1. Upheld

The ASA noted from the evidence submitted that over £300,000 worth of prizes was distributed across more than 200,000 winning scratchcards. We also noted there was one cash prize of £20,000, four cash prizes of £1,000 and six cash prizes of £500. The remaining prize values, £20, £10, £5, £2 and £1, were awarded as vouchers to be redeemed on board easyJet flights.

We considered that consumers would understand from the claim "Thousands of other cash prizes are also up for grabs" that, in addition to the first prize of £20,000, there were thousands of other cash prizes. We considered consumers would have been disappointed to learn that the majority of the prizes were in fact lower value sums awarded as vouchers for use only on-board and concluded that the claim was likely to mislead.

We further noted the CAP Code clarified that promotions should specify clearly before any purchase the minimum number and nature of any prizes and considered that the ad had failed to comply in this regard. We welcomed easyJet's assurance that they would make amendments before advertising similar promotions.

On this point, the ad breached CAP Code clauses 7.1 (Truthfulness), 27.4 (Sales promotion rules) and 34.1e (Significant conditions for promotions - prizes).

2. Upheld

We understood that there had been a "no purchase necessary" route and that customers could choose to write in to easyJet with a stamped addressed envelope and receive a scratchcard. We also understood that easyJet intended to include detail of the 'no purchase necessary' route on their website in future. We considered, however, that to comply with the Code, the free entry route should have been explained clearly in the ad itself and not just on the website.

On this point, the ad breached CAP Code clause 34.1a (Significant conditions for promotions - how to participate).

Action

We welcomed easyJet's assurance that they would amend the claim "Thousands of other cash prizes" before issuing similar material and also their intention to explain clearly in future ads any 'no purchase necessary' route. We advised

them to seek guidance from the CAP Copy Advice team for clarification of Code requirements before making the changes.

Kenwood Travel Ltd

Number of complaints: 1
Date: 23 April 2008
Media: National press
Sector: Holidays and travel

Ad

A national press ad, for a prize draw, stated "WIN 2 RETURN FLIGHTS Win a pair of tickets to Barbados or St Lucia in a FREE PRIZE DRAW, courtesy of Virgin Atlantic & Kenwood Travel. No purchase necessary - see link below for details". A website address was given.

Issue

1. The complainant, who won the prize draw, challenged whether the ad was misleading, because it had not made clear that the winner would have to pay taxes and charges, which amounted to £280, in order to be able to take advantage of the prize.

2. The ASA challenged the ad's failure to include a closing date for the prize draw.

The CAP Code: 7.1;27.4;34.1

Response

1. Kenwood Travel Ltd (Kenwood) said space limitations prevented them from including the terms and conditions of the promotion in the ad. They pointed out however that entrants were directed to their website where full details of the competition were set out. Kenwood sent the ASA a copy of the relevant section of the terms and conditions which stated at point six "Airport Tax and Security Charge is to be paid by the winner." They explained that those conditions applied to all their Virgin promotions because taxes and security charges were paid by the airline directly to the authorities and Virgin were unable to discount them.

2. Kenwood said they were not aware that it was a requirement of the CAP Code to include a closing date for promotions and apologised for the omission. They said the closing date of the promotion was two weeks after publication of the ad.

Assessment

1. Upheld

The ASA understood that Kenwood had not included the terms and conditions of the promotion in the ad because of space limitations and noted the ad included a website address where further details could be found. We further noted the

terms and conditions were accessible via a link on the online entry form filled out by participants. Participants had to check the "Terms and Conditions" box to show they had read them before submitting their entry.

We noted CAP Code clause 34.1e stated that promotions needed to make clear the nature of any prizes and considered that, by failing to indicate in the ad that the winner would be liable to pay taxes and charges, Kenwood had not made clear the nature of the prize. While we acknowledged that the requirement to pay taxes and charges was set out in the terms and conditions, we concluded that it was a significant condition likely to influence a consumer's decision about whether to participate in the promotion and, as such, should have been made clear in the ad. We considered that the ad's failure to include that information was likely to have caused unnecessary disappointment to participants, who would only have discovered the onerous condition when they went online.

On this point, the ad breached CAP Code clauses 7.1 (Truthfulness), 27.4 (Unnecessary disappointment) and 34.1e (Significant conditions for promotions).

2. Upheld

We noted Kenwood's comments and understood that the closing date of the promotion was two weeks after the publication of the ad. We considered that the closing date was therefore a significant condition that should have been made clear in the ad.

On this point, the ad breached CAP Code clause 34.1c (Significant conditions for promotions).

Action

We told Kenwood to ensure that ads for future, similar promotions made clear any significant conditions, including the closing date and any costs for which the winner would be liable. We advised them to contact the CAP Copy Advice team for guidance.

NCJ Media Ltd t/a The Evening Chronicle

Number of complaints: 1

Date: 2 July 2008

Media: Regional press

Sector: Publishing

Ad

A regional press competition, run by the Evening Chronicle, stated "Chronicle Extra Promotion OUR HUGE CASH GIVEAWAY IS ABOUT TO START Your first token in our fantastic Tokens for Schools competition has finally arrived. Almost 150 schools in our region have signed up to take part in our latest competition. Tokens for Schools will see us giving away £15,000 for pupils and teachers to

spend on whatever equipment they would like, from new books to toys, calculators to PE apparatus ... now it's up to all of you mums, dads, family members and friends of the community to collect as many tokens as possible and help your school scoop the prize. Your first token is below and you will find following tokens in your Evening Chronicle, Chronicle Extra and on Chroniclelive over the next 10 weeks ... The overall prize is divided into three categories - Primary, Secondary and Special Schools - and the winner from each category will bag themselves £5,000 to spend as they please. The deadline for collecting tokens is Friday July 13, 2007 and winners will be announced before the start of the summer holidays ... A maximum of 10 bonus tokens per child will be accepted ... £5,000 will be awarded to the primary, secondary and special school that collects that [sic] most tokens based on a pro rata system. Schools that have registered to take part are being reassured that information packs are being sent out now, so they will have everything they need to start collecting tokens on their return from the Easter holidays".

Issue

The complainant, who had co-ordinated her school's collection of tokens, thought the promotion had not been run fairly or efficiently. She said the deadline for collecting tokens was brought forward at very short notice and, despite having asked the Evening Chronicle which schools won and how many tokens they had collected, no information about the winners was forthcoming.

The CAP Code: 7.1;27.3;27.4;31.1;34.1c;35.9e

Response

NCJ Media said pupils and families at participating schools needed to collect tokens that were printed in the Evening Chronicle. The winners were the schools in each category that collected the greatest number of tokens per pupil. Three schools in the region - one primary, one secondary and one special school - received a prize of £5,000 each. NCJ Media sent a spreadsheet that showed all the schools that had taken part in the competition, the number of their pupils, the number of tokens each school had collected and the number of tokens per pupil collected by each school.

The publicised deadline for collecting tokens was 13 July 2007, which would have given registered schools two weeks to provide their final token count. However, NCJ Media decided to bring the deadline forward to 4 July, to allow cheques to be presented to the winning schools before the summer holidays. They acknowledged that that information might have been communicated more effectively by printing it in the Evening Chronicle, but felt a personal letter to each schools tokens co-ordinator announcing the new deadline of 4 July was sufficient, because it at least alerted each school to the new deadline or encouraged the school to contact them if there was a problem. That letter was dated 27 June 2007 but the complainant did not receive it until 2 July. They said the complainant had, on receipt of the letter, phoned them to express concern

about not having enough time to provide her schools final token count; they offered the complainant some extra time but she declined the offer on the grounds that it would not help. They said they received no other complaints from schools and the token totals were provided on time.

The letter of 27 June stated " ... We will then come out to see the top 5 schools and count your tokens on Thursday, July 5th 2007, and be able to announce the winner on Friday!" The complainant received a letter dated 5 July 2007 that stated her school had not won but did not announce the winners or the number of tokens the winners had collected; it stated that the winning schools would be featured in the paper "over the next week". NCJ Media said that letter had been prepared on 5 July but was not completed and posted until 9 July; the date was not amended to carry the correct postal date. NCJ Media said the winners were not announced on Friday 6 July but were printed in the Evening Chronicle at the earliest opportunity; they sent a copy of an extract of the 14 July 2007 edition of the paper that announced the winning schools in each category. They did not write individually to the schools that had not won announcing the winners.

The complainant sent a letter of complaint to NCJ Media about the running of the competition in July 2007, which she followed up with phone calls and a fax, but said she did not receive a response. NCJ Media said they initially mislaid the complainants letter but did eventually reply to it on 17 December 2007; they sent a copy of their reply.

Assessment

Upheld

The ASA considered it was fair and reasonable for the winners to have been chosen on the basis that they collected the greatest number of tokens per pupil, instead of the greatest number of tokens overall, because that meant smaller schools were not at a disadvantage. We noted from the spreadsheet submitted by NCJ Media that the winning schools were indeed the ones that had collected the greatest number of tokens per pupil. We were satisfied that the winners had been selected fairly.

However, we considered there were several problems with the administration of the promotion. Firstly, NCJ Media had decided at short notice to change the closing date to ensure they could announce the winners before the school holidays. Because NCJ Media were presumably aware of, or could have found out, the dates of the school holidays before the promotion began, it seemed the change in closing date could have been avoided.

Secondly, we considered NCJ Media should have made more of an effort to communicate the change in deadline, for example by printing it in the Evening Chronicle and e-mailing or phoning schools' token co-ordinators. We considered it would take some time for schools to inform pupils and their families of the new deadline and co-ordinate the counting of tokens and posting a letter a week

before the new deadline date was therefore insufficient; we noted the complainant received the letter two days before the new deadline. We acknowledged that NCJ Media had offered the complainant more time to submit her school's token count but there was unfortunately a discrepancy between the extra time the complainant claimed to have been allowed and the extra time NCJ Media said they granted her. Also, we noted the letter of 27 June did not draw attention to the fact that the deadline had changed and been brought forward by nine days; it merely stated " ... Deadline for letting us know your tally is Wednesday, July 4th 2007, any schools which have not contacted us by 5.30pm on Wednesday will be assumed that they are not entering ...". We considered that participants should have been given more notice of the change in deadline date but, if that was not possible, NCJ Media should at least have given greater prominence to the change in date by communicating it more effectively.

We noted NCJ Media had published the names and towns of the winning schools. However, there was a delay in announcing the winners; they were announced on 14 July instead of the publicised date of 6 July. Although the delay was quite short, NCJ Media had provided no reason for it and participants who bought the Evening Chronicle on 6 July expecting to find the winners inside were likely to have been disappointed. Also, the token totals of the winning schools were not published in the Evening Chronicle and NCJ Media's letter to the complainant of 17 December (which she said she never received) stated " ... we consider the individual efforts of each group and number of tokens collected individually as sensitive information ...". They told the ASA that it had been a mistake to suggest the information was sensitive and that it was actually in the public domain; however they did not send proof of that. We considered that participants should have been able to easily find out the token totals of the winning schools, through them being published or made available on request, but NCJ Media had not shown that was the case. We noted the promotion stated "winners will be announced before the start of the summer holidays" but considered that NCJ Media had not specified clearly enough how and when winners and results would be announced.

We noted it took NCJ Media five months to reply to the complainant's letter of complaint about the competition; we considered that suggested they did not have adequate resources to deal with complaints about the promotion. We also noted the complainant's assertion that she never received NCJ Media's letter of reply.

We concluded that several aspects of the promotion had not been conducted fairly or efficiently and it was therefore likely that it had misled and disappointed participants.

The promotion breached CAP Code clauses 7.1 (Truthfulness), 27.3 and 27.4 (Sales promotion rules - Introduction), 31.1 (Sales promotion rules - Administration), 34.1c (Sales promotion rules - Significant conditions for promotions) and 35.9e (Sales promotion rules - Other rules for prize promotions).

Action

We told NCJ Media to ensure that future promotions were conducted fairly, promptly and efficiently, under proper supervision and with adequate resources, and that they avoided causing unnecessary disappointment. We also told them to specify clearly the closing date and how and when winners and results would be announced, and to publish or make available on request results or, if applicable, winning entries.

Northern & Shell plc t/a New!

Number of complaints: 5

Date: 4 June 2008

Media: Magazine

Sector: Publishing

Ad

A sales promotion in New! magazine was headlined "November giveaway". Underneath were the details of eight different competitions, which required entrants to text a keyword and their contact details, or to enter a code on the publisher's website.

Issue

Five complainants, all of whom had entered one of the competitions and subsequently been named as one of the winners on the publisher's website, objected because they were told they had not won a prize.

The CAP Code: 27.4;31.1;35.6

Response

Sponge, who managed premium and non-premium telephony and mobile services for Northern & Shell, responded to the complaints.

Sponge said the promotion had run in issue 238 of New! magazine. They said readers could enter via text, at a premium charge, or for free via a website; the closing date was published as 23.59 on Sunday 11 November 2007. Sponge said, when a promotion closed, their random draw engine used an automated Mersenne twister pseudo-random number generator to select a winner giving each and every entry a fair and equal opportunity to win.

Sponge explained that the promotion had originally been intended to run in issue 237 of New! magazine with a closing date of 23.59 on Sunday 4 November; it was subsequently changed to issue 238 and the closing date was changed to 23.59 on 11 November. They said, however, the closing date was left set on their system as 23.59 on 4 November and the random draw therefore ran at the incorrect time on 4 November taking into account all entries received up to that

date. They said the winners of each of the eight prizes in that draw were transcribed and sent to New! magazine on Monday 5 and Tuesday 6 November; during that week the winners were contacted by New! and told they had won a prize.

Sponge said, in that same week, it was noticed that a mistake had been made with the draw date and the draw was therefore reset to run on 11 November at 23.59. They said, however, that when that second draw ran it had not included all entrants because it was mistakenly set to include only entries since the previous draw at 23.59 on 4 November. They said the new draw on 11 November had created a second list of winners for each prize but those winners were not contacted. Sponge said the winners of the first draw were published in issue 243 of the magazine but the sets of winners from both draws were published on the website. Sponge said 10 of the entrants for the second draw, who had seen their names printed on the website, had contacted them.

Sponge believed neither of the first two draws were fair or compliant because the winners had not been selected from all entries and each entrant had not therefore been given an equal opportunity to win. They therefore decided to run a third, weighted draw. They explained that, for the first prize, the winner for the first draw was picked from 800 entries up to 23.59 on 4 November and the winner for the second draw for that same prize was picked from 200 entries between 23.59 on the 4 November and 23.59 11 November. They therefore decided to conduct another random draw between those two winners that gave the first an 800/1000 probability of winning and the second a 200/1000 probability of winning. They explained that a sequential series of numbers was allocated to each entrant so, in the example of the first prize, the first winner was allocated the numbers 1 to 800 and the second winner was allocated 801 to 1000. They then used a random number generator to select a number within the full range and the entrant with that number would win. They said, when there were multiple prizes, each would have the number of entries for their draw and 10 would be selected from that range.

Sponge said, following that weighted third draw, they had four different customer issues. The first was customers who had won in the first draw and won in the third draw. Sponge said such customers were official winners who had already been notified and sent prizes so no further action was taken. They said the second issue was customers who had won the first draw but not the third draw. Sponge said they had already been notified and sent prizes and, even though they did not win the third draw and were not true winners, they were allowed to keep their prizes and sent no further communication. They said the third issue was customers who had won the second draw and the third draw. Those customers had not been contacted or sent prizes, but after the third draw were official winners. Sponge said additional prizes had been sourced and sent to those customers; if the prizes were not available, cash to the value of the prize printed in the publication was offered. They said the final issue was customers

who had won the second draw but had not won the third draw; they had not been sent any prizes and had not been printed in the magazine but were temporarily published as winners on the internet. Sponge said those customers who had seen their name on the internet were sent a letter explaining that their names were printed in error, that the draws were independently conducted in a fair and equal manner and listing the name and town of the official winners.

Sponge sent the full terms and conditions for the promotion.

Assessment

Upheld

The ASA noted an error had been made with the closing date of the promotion on the automated system and the first automated draw for the promotion had therefore run a week early. We also noted the second automated draw, run on the correct date, incorrectly selected winners only from entrants since the first erroneous draw. We noted Sponge had attempted to rectify those problems by running a weighted third draw.

We also noted, following the second draw, New! had mistakenly published the names of the winners of that draw on their website and had then informed those participants who had seen their name on the website that they had not won a prize.

We considered that, because the closing date for the promotion was published in the magazine as 23.59 on 11 November 2007, readers would expect the draw to be run after that time and for it to be a non-weighted, completely random draw involving all entrants. We noted, however, that errors in the administration of the promotion meant that at no time were all entrants given an equal chance of winning.

We acknowledged that the problems with the promotion were unintentional. However, we concluded that the errors in the administration of the promotion meant that New! had failed to deal fairly and honourably with entrants and had caused unnecessary disappointment.

The promotion breached CAP Code clauses 27.4 (Sales promotion rules - Introduction), 31.1 (Sales promotion rules - Administration) and 35.6 (Sales promotion rules - Other rules for prize promotions).

Action

We told New! to ensure that promotions were administered fairly and efficiently in future.

bmibaby Ltd t/a BMI Baby

Number of complaints: 1

Date: 25 June 2008

Media: Internet (sales promotion)

Sector: Holidays and travel

Ad

An internet sales promotion offered "up to 40% off all flights" with bmibaby. Smaller text underneath stated "offer ends midnight Tuesday". Even smaller text underneath stated "travel from April to July, all prices one way incl. taxes and charges".

Issue

The complainant, who had followed the Rome to Birmingham flight price in the pre-sale period when the price was falling, objected that the ad was misleading. He said, during the sale period, the price rose compared to its price in the pre-sale period and he believed therefore that there was no 40% reduction.

The CAP Code: 7.1;3.1;16.1 (old);27.4;30.1

Response

bmibaby Ltd (bmibaby) said the offer applied to flights from Birmingham, Cardiff, East Midlands and Manchester only. They said they had offered up to 40% off all routes from those airports with at least 10% availability under the offer. They said the Terms and Conditions of the offer, which customers could click through to from the ad, were clear about the departure airports included in the promotion. They said the complainant's intended flight may have been subject to a discount, depending on the dates they had attempted to book, but pointed out the complainant was trying to book a flight from Rome to Birmingham, which was outside the terms of the offer.

Assessment

Upheld

We noted the ad stated "up to 40% off all flights". We considered that, because the offer only applied to flights from Birmingham, Cardiff, East Midlands and Manchester, the claim was likely to mislead. We were further concerned that the significant limitation to the offer was not stated prominently in the ad.

The ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 16.1 (Availability of products) and 27.4 (Sales promotions) and 30.1 (Sales promotions: availability).

Action

The ad should not be shown again in its current form. We reminded bmibaby to ensure significant conditions likely to affect consumers' understanding of an offer

were stated prominently in future. We advised them to consult the CAP Copy Advice team before running future promotions.

Interflora British Unit

Number of complaints: 1

Date: 11 June 2008

Media: E-mail

Sector: Leisure

Ad

A promotional e-mail for Mother's Day gifts was headlined "Free delivery: Mother's Day by Interflora". Text continued "Free Delivery Offer! ... At Interflora we're experts at delivering emotions because we specialise in delivering exquisite, expertly presented gifts. Plus, order today, and the delivery is FREE!*"An asterisk was linked to a small-print footnote that stated "Free UK standard delivery worth £4.99. Order must exceed £24.99. Offer ends midnight 25 February 2008.

Issue

The complainant believed the ad was misleading because, when she ordered two bunches of flowers for Mother's Day, she found that there was a £5 delivery charge to pay on each.

The CAP Code: 7.1;27.4;34.1a;32.1

Response

Interflora British Unit (Interflora) said they had not intended to mislead consumers and were committed to ensuring future marketing communications were very clear about Free Delivery Offers. They said at present it was only at Mother's Day and Christmas that they imposed additional peak charges for specific premium delivery services. They said, in the lead up to Mother's Day, they sent 14 newsletters, six offering free delivery. They said the majority of these were mailed to their full customer base. They said their database consisted of customers who had previously purchased from them and these customers were therefore used to receiving Interflora promotional material. They said they did not believe their promotion had caused widespread confusion as only one complaint had been recorded.

Interflora said that, from their own research, they believed consumers were aware that retailers imposed additional delivery charges out of hours and at premium times. They said they accepted that the offer could have been communicated more clearly and had already briefed their marketing team to include the value of the offer ("Free UK standard delivery worth £4.99") in the headline, marked with an asterisk to show that terms and conditions applied, and

clarification in the main body of the e-mail to say that free delivery related to standard next day delivery.

Interflora said they did not usually offer Sunday delivery, and the volume of orders for Mothering Sunday were always high, which is why the service incurred a premium charge on that day. They said the charge for Mother's Day flowers delivered on the Friday or Saturday was £4.99, which would mean no delivery charge under their offer.

Assessment

Upheld

We noted Interflora's argument that gifts delivered during the Mother's Day period, but not on Mothering Sunday itself, would be delivered free of charge. We nevertheless noted that delivery of gifts for Mother's Day was the subject of the offer and considered most people would expect a free delivery offer for Mother's Day gifts and flowers to be delivered on Mother's Day. Because delivery on Mother's Day cost £9.99 and the delivery promotion only covered delivery charges of up to £4.99, we considered that the claim "Free delivery" in conjunction with the prominent reference to Mother's Day was misleading.

The ad breached CAP Code clauses 7.1 (Truthfulness) and 27.4, 34.1a and 32.1 (Promotions).

Action

We told Interflora not to use the claim "Free Delivery" in ads for services that incurred a delivery charge. We advised them to consult the CAP Copy Advice team for help with future promotional mailings.