

CAP sales promotion rules consultation

Proposals for amending rules in the sales promotion section of the CAP code

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) is consulting on proposals to amend some of the rules in Section 8 of its Code, which relates to the regulation of sales promotions.

CAP considers that it is desirable to amend some of its rules on sales promotions, to ensure that they remain consistent with European Unfair Commercial Practices Directive (UCPD) and Consumer Protection from Unfair Trading Regulations (CPRs), which implement that Directive in UK law.

The consultation will close at 5pm on 16 December 2014. For more information on the next steps see section 4 and, for full details of how to respond to the consultation, please see Annex 1.

2. Introduction to CAP and the ASA

2.1 The Committee of Advertising Practice

CAP is the self-regulatory body that creates, revises and enforces the CAP Code. The CAP Code covers non-broadcast marketing communications, which include advertisements placed in traditional and new media, sales promotions, direct marketing communications and marketing communications on marketers' own websites. The marketer has primary responsibility for complying with the CAP Code and compliance is not voluntary. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from adjudication by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP's members include organisations that represent the advertising, sales promotion and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including on misleading advertising ([Directive 2005/29/EC](#)). Self-regulation is accepted by the Department for Business, Innovation and Skills and the Courts as a first line of control in protecting consumers and the industry.

Information about CAP is available at www.cap.org.uk, which includes a copy of the [CAP Code](#).

2.2 The Advertising Standards Authority

The ASA is the independent body responsible for administering the CAP Code and the [UK Code of Broadcast Advertising](#) (the BCAP Code) and ensuring that the self-regulatory system works in the public interest. The Codes require that all marketing communications are legal, decent, honest and truthful. The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's adjudications are published on the ASA's website, www.asa.org.uk, and made available to the media. An Independent Review Procedure exists for parties who wish to challenge an adjudication when they believe there are substantial flaws in the final decision and/or in the process by which the final decision had been reached.

If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP conducts compliance, monitoring and research to enforce the ASA Council's decisions. The ASA's work in regulating non-broadcast marketing communications is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards

Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about the ASA, including the complaint-handling and investigations procedures and the ASA's independent review procedure, is available on its website. Information about Asbof and Basbof is available at www.asbof.co.uk.

3. Policy Background and CAP's Decision to Consult

3.1 General Policy Objectives

CAP's general policy objective is to set standards to ensure that all non-broadcast marketing communications covered by the CAP Code are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility.

CAP intends its Code to be based on the enduring principles that marketing communications should be responsible, respect the principles of fair competition generally accepted in business and should not mislead, harm or offend. CAP is keen to maintain an environment in which responsible non-broadcast advertising can flourish. CAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that the rules are easily understood, easily implemented and easily enforced.

3.2 The CAP Code and sales promotions

The CAP Code includes a section which deals specifically with sales promotions¹.

As with all forms of marketing communications, sales promotions must not mislead, harm or offend their audience. In addition, the promoter must ensure that those who take part are dealt with fairly in all stages of the promotion, including competitions and prize promotions. The Sales Promotion section contains specific sub-sections that pertain to promotional availability, promotion administration and significant conditions that must be made clear to the consumer prior to purchase or entry, as well as specific rules for prize promotions and trade promotions.

The present sales promotion rules are attached in Annex 2.

3.3 Policy history

The Sales Promotion rules were last reviewed in 2008, just after the Unfair Commercial Practices Directive (UCPD) had been implemented in UK law by the Consumer Protection from Unfair Trading Regulations (CPRs). In recent years, legal interpretation of the Directive has provided clarification of how member states should enforce this directive.

3.4 CAP's Decision to Consult

CAP has sought legal advice to ensure that its rules on sales promotions are consistent with UCPD and the CPRs. On the basis of the advice CAP is now proposing that some rules should be modified to reflect legal interpretations which clarify the application of the legislation. Because UCPD requires maximum harmonisation by member states, the rules that reflect it should be neither more restrictive nor more permissive than UCPD itself.

CAP is also consulting on two additional changes to the sales promotion rules brought about by CAP's concurrent consultation on [Section 9: Distance Selling](#) (Questions 3 and 4)

¹ "A sales promotion can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive."

and a further change which has been prompted by separate legal considerations (Question 14).

3.5 Proposed Rules

In this consultation document, CAP identifies rules that it proposes to amend together with the supporting rationale for each amendment.

Respondents are invited to comment on each proposed amendment. If they consider that changes are necessary to other rules in the sales promotion section, respondents are invited to provide their reasoning. (Question 15).

4. Proposed amendments to present rules:

Question 1

Present rule:

8.9 *Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and that they were capable of meeting that response.*

Proposed rule:

8.9 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and either that they were capable of meeting that response or that consumers had sufficient information to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

Rationale:

While the present rule requires promoters to make a reasonable estimate of the likely response to the promotion, it then requires that estimate to be met.

The proposed amendment requires promoters to make a reasonable estimate of the likely response to the promotion and then show either that they will meet that response or clearly communicate to consumers that demand might exceed availability.

CAP considers a promotion which is sufficiently clear as to the availability of the relevant promotional item to enable the consumer to make an informed transactional decision is likely to be permitted by the CPRs and hence may not be prohibited even if it offers a limited number of promotional items. To avoid the potential to mislead, CAP considers it might be helpful for consumers to know the extent of availability as well as the likely uptake to allow them to make a decision whether to participate.

In many promotions, there is potential for a consumer to feel disappointed if they do not obtain the promotional item. That disappointment might be exacerbated if they also feel they have been misled about the likelihood of them obtaining the item in the first place. If promoters ensure that they are transparent about the likely demand, they are more likely to meet the requirements of the CPRs whilst minimising consumer disappointment and maintaining the reputation of the promotions industry.

Even in cases where the promoter knows from the outset that the number of promotional items will be limited, making a reasonable estimate of demand at the outset would enable that promoter to frame the offer in a way that empowers the consumer to make an informed decision on whether to participate, and how likely they are to benefit, thereby minimising the potential for disappointment.

Promoters could comply with the amended rule by, for example, including practical information such as '5000 available, likely to run out quickly', 'vouchers available for first 500 customers', or 'visit our promotional stand before 9am to avoid disappointment'.

The proposed amendment would allow the ASA to assess promotions on a case-by-case basis.

The amendment would also bring this sales promotion-specific rule in line with rule 3.28.1², which requires marketing communications to make clear that stock is limited, if estimated demand exceeds supply.

Question 1: Do you agree with the amended wording of this rule? If not, please explain why.

Question 2

Present rule:

8.11 *Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited.*

Proposed rule:

8.11 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited, unless the limitation is sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.

Rationale:

This proposed amendment reflects the proposed change to 8.9 (Question 1) and has the same effect of requiring the promoter to include information that enables the consumer to assess whether to participate.

Question 2: Do you agree with the amended wording of this rule? If not, please explain why.

Question 3

Present rule:

8.12 *If, having made a reasonable estimate as in rule 8.9, it is unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside its control, the promoter must ensure relevant communication with applicants and consumers and offer a refund or a substitute product in accordance with rule 9.5.*

Proposed rule:

8.12 If promoters rely on being able to meet the estimated response as in rule 8.9 but are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they must ensure relevant timely communication with applicants and consumers and offer a refund or a reasonable equivalent.

² **3.28.1** if estimated demand exceeds supply, marketing communications must make clear that stock is limited

Rationale:

This proposed update reflects and is contingent upon the amendments proposed to 8.9 (Question 1) and 8.11 (Question 2) and refers to promotions where a promoter had intended to meet the estimated demand.

The proposed deleted reference to rule 9.5 reflects CAP's concurrent consultation which itself proposes to delete Section 9: Distance Selling from the Code; CAP proposes to amend the wording to require promoters to offer a 'reasonable equivalent' in order to reflect banned practice 19 of UCPD.

Question 3: Do you agree with the amended wording of this rule? If not, please explain why.

Question 4

Present Rule:

8.16 *Promoters must normally fulfil applications within 30 days in accordance with rule 9.4 and refund money in accordance with rule 9.5.*

Rationale:

This rule is proposed to be deleted. CAP is reviewing the distance selling sections of the Code in light of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and proposes to delete rules 9.4 and 9.5 which are referred to here. CAP considers the harm described by this rule continues to be prevented by existing rule 8.15.1, which requires promoters to award prizes as described, or their reasonable equivalent. CAP will consider responses to this proposal alongside responses to the consultation on [Distance Selling rules](#).

Question 4: Do you agree that the deletion of this rule is necessary and that the harm described will continue to be prevented?

Question 5

Present rule:

8.17 *Before purchase or, if no purchase is required, before or at the time of entry or application, promoters must communicate all applicable significant conditions. Significant conditions include:*

Proposed rule:

8.17 Marketing communications or other material referring to sales promotions must communicate all applicable significant conditions the omission of which are likely to mislead. Significant conditions may, depending on the circumstances, include:

Rationale:

This rule introduces a list of potential significant conditions, not all of which are included in this consultation; please see questions 6, 7, 8 & 9 for those which are included.

The first two proposed amendments to this rule reflect the way the rule is already interpreted by the ASA. CAP proposes that clarifying this in the wording of the rule would add clarity for promoters and achieve consistency with rule 3.3, which stipulates that marketing communications must not mislead the consumer by omitting material information³.

The addition of 'other material referring to sales promotions' clarifies that the sales promotion rules apply to material that would ordinarily be outside the remit of the Code, such as on-pack and point-of-sale material.

As rule 8.17 is currently worded, significant conditions could be omitted from marketing communications, even where this was misleading, as long as they were communicated before entry - which is often a later stage than the marketing communication. CAP considers that unless it can never be misleading to omit these from the marketing communication, this amendment would be likely to be required by UCPD to avoid marketing communications creating a misleading impression.

Furthermore, the present wording of the rule creates categories of information that must be communicated regardless of whether or not their omission would be misleading in the particular circumstances. CAP considers this approach is likely to be inconsistent with UCPD and the latter two proposed additions would comply with the requirements of UCPD while allowing the ASA to assess misleadingness on a case by case basis.

Rule 8.18, which grants exceptions for marketing communications that are limited in time and space,⁴ should be read alongside 8.17. CAP and the ASA are used to advising on and applying that exception; some examples of CAP and the ASA's established position are available in CAP's Advice Online and in previous ASA rulings:

[CAP Advice Online - Sales Promotions \(Ts & Cs\)](#)

[ASA Adjudication on Cassava Enterprises \(Gibraltar\) Ltd](#)⁵.

Question 5: Do you agree with the amended wording of this rule? If not, please explain why.

³ **3.3** Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

⁴ **8.18** Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.

Question 6

Present rule:

8.17.4.b *Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and promotions addressed to or targeted at children always need a closing date*

Proposed rule:

8.17.4.b Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and promotions addressed to or targeted at children **are likely to** need a closing date

Rationale:

CAP considers the present rule is likely to be more restrictive than UCPD; the amendment grants additional flexibility for promoters while continuing to allow the ASA to assess the effect on a consumer's transactional decision on a case-by-case basis.

Question 6: Do you agree with the amended wording of this rule? If not, please explain why.

Question 7

Present rule:

8.17.4.d *Promoters must state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers*

Proposed rule:

8.17.4.d Promoters **must** state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers, **if the omission of that information is likely to mislead**

Rationale:

CAP considers the present wording is likely to be more restrictive than UCPD allows; the more conditional wording grants additional flexibility for promoters while continuing to allow the ASA to assess the effect on a consumer's transactional decision on a case-by-case basis.

Question 7: Do you agree with the amended wording of this rule? If not, please explain why.

Question 8

Present rule:

8.17.4.e *Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed. If they are changed, promoters must do*

everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged

Proposed rule:

8.17.4.e Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed **in a way that is likely to disadvantage the consumer**. If **because of unavoidable circumstances** they are changed, promoters must **still** do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged.

Rationale:

CAP considers this proposed amendment is likely to reflect the provisions of UCPD by permitting a promoter to change a closing date where that is not likely to cause any consumer disadvantage. The ASA is accustomed to considering issues such as whether a change was likely to disadvantage a consumer, or whether specific circumstances were 'unavoidable'.

Question 8: Do you agree with the amended wording of this rule? If not, please explain why.

Question 9

Present rule:

8.17.8 Availability *The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer*

Proposed rule:

8.17.8 Availability The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer. **Any limitation on availability should be sufficiently clear for a consumer to assess whether participation is worthwhile.**

Rationale:

This proposed amendment reflects the proposed amendments of rules 8.9 and 8.11 in permitting promoters to run limited-availability offers, as provided by UCPD, while ensuring that consumers have the information they require to make informed decisions on whether to participate in a promotion.

Question 9: Do you agree with the amended wording of this rule? If not, please explain why.

Question 10

Present rule:

8.19 *Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any*

other term for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.

Proposed rule:

8.19 Promoters must not claim that consumers have won a prize if they have not. **The distinction between prizes and gifts, or equivalent benefits, must always be clear.** Ordinarily, consumers may expect an item offered to a significant proportion of participants to be described as a ‘gift’, while an item offered to a small minority may be more likely to be described as a ‘prize’. If a promotion offers a gift to a significant proportion and a prize to a **minority**, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.

Rationale:

This proposed amendment clarifies that the intention of this rule is to prevent consumers from being misled into thinking they are in a lucky minority, by requiring the promoter to provide enough information to demonstrate what proportion of participants will obtain a prize or gift. It remains likely that ‘gift’ will ordinarily mean an item awarded to a significant proportion while a ‘prize’ is a more valuable item awarded to a small minority, but the amended wording allows for the promoter to use the most appropriate descriptor, as long as the consumer is not misled as to the relative value of the item awarded to them.

Question 10: Do you agree with the amended wording of this rule? If not, please explain why.

Question 11

Present rule:

8.23 *Promoters must avoid complex rules and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.*

Proposed rule:

8.23 Promoters must avoid rules **that are too complex to be understood by potential participants** and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.

Rationale:

The present rule prevents prize promotion rules from being ‘complex’; in the light of UCPD, CAP acknowledges that ‘complex’ rules might not necessarily be impermissible, depending

on the circumstances. The proposed amendment retains the requirement for promoters to ensure that rules are clear to potential participants.

Question 11: Do you agree with the amended wording of this rule? If not, please explain why.

Question 12

Present rule:

8.25 *Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.*

Proposed rule:

8.25 Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.

Rationale:

CAP proposes to delete the word 'unreasonable' from this rule to reflect CJEU case law⁶, which clarifies that it is unacceptable for consumers to pay for claiming a prize. This requirement is also reflected in present rule 8.21.1. "*Promoters must 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*"⁷.

Question 12: Do you agree with the amended wording of this rule? If not, please explain why.

Question 13

Present rule:

8.28 *Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions must specify before or at the time of entry:*

⁶ Purely Creative Limited and others v Office of Fair Trading, Case C-428/11

⁷ **8.21.1** Promoters must 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.

Proposed rule:

8.28 Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions **are likely to be required to specify clearly** before or at the time of entry:

Rationale:

As with 8.17, CAP considers this amendment is likely to make the rule consistent with UCPD by allowing the ASA to consider on a case-by-case basis whether omitting this information is likely to mislead the consumer.

Question 13: Do you agree with the amended wording of this rule? If not, please explain why.

Question 14

Present rule:

8.28.5 *how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners must not be compromised by the publication of excessive personal information*

Proposed rule:

8.28.5 how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries **except for when promoters are subject to an absolute legal requirement never to publish such information. Promoters must obtain consent to such publicity from all competition entrants at the time of entry.** Prizewinners must not be compromised by the publication of excessive personal information

Rationale:

This proposed amendment does not relate to UCPD but has been proposed by CAP following legal advice which highlighted that some organisations, such as National Savings & Investments (NS&I), have statutory obligations which prevent them from publishing details of prizewinners.

The legislative requirements imposed on NS&I include an absolute duty to keep the names of account-holders confidential. For the avoidance of doubt, this rule does not refer to the Data Protection Act, which only prohibits the publication of names where prior consent has not been obtained; promoters would normally be expected to include consent to publish appropriate details as a condition of entry.

Question 14: Do you agree with the amended wording of this rule? If not, please explain why.

Additional Question

Question 15: Do you have any general comments on the changes proposed by CAP to the sales promotion rules, or on the sales promotion section in general?

5. Next Steps and Timetable to Implementation

CAP is committed to considering all responses carefully and with an open mind. Given the sector-specific nature of this consultation, CAP would in particular welcome responses from stakeholders with an interest or expertise in sales promotions and the implementation of UCPD/CPRs. Responses from other stakeholders and members of the public are also welcome.

Information on how to respond to this consultation can be found in Annex 1.

The following summarises the consultation process and subsequent stages of CAP's consideration of the proposed changes to the Code:

- The consultation will run for six weeks, and will close at 5pm on 16 December 2014.
- CAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions it makes.
- The consultation evaluation will be published on the CAP website when the outcome of the consultation is announced.

CAP will seek to implement rules as soon as is practicable.

For full details of how to respond to the consultation, please see Annex 1.

Annex 1: Responding to this consultation

How to respond

CAP invites written comments, including supporting evidence on the proposals contained in this document, by **5pm on 16 December 2014**

When responding, please state if you are doing so as an individual or a representative of an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send your response to salespromotions@cap.org.uk.

If you are unable to reply by email, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

CAP Sales Promotion Consultation
Regulatory Policy Team
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Confidentiality

CAP considers that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.

8

SALES PROMOTIONS



Background

The sales promotion rules apply to consumer and trade promotions, incentive schemes and the promotional elements of sponsorships; they regulate the nature and administration of promotions.

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 for Great Britain and the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended) for Northern Ireland).

Promoters should comply with all other relevant legislation, including data protection legislation for which guidance is available from the Information Commissioner's Office.

The sales promotion rules must be read in conjunction with all other parts of the Code, including the relevant rules in Section 5: [Children](#) and Section 18: [Alcohol](#).

Definition

A sales promotion can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of sales promotions includes: "two for the price of one" offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws. The rules do not apply to routine, non-promotional, distribution of products or product extensions, for example one-off editorial supplements (in printed or electronic form) to newspapers or magazines.

Rules

- 8.1 Promoters are responsible for all aspects and all stages of their promotions.
- 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.

Protection of consumers, safety and suitability

- 8.3 Promoters must do everything reasonable to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. Literature accompanying promotional items must give any necessary warnings and safety advice.
- 8.4 Alcoholic drinks must not feature in promotions directed at people under 18. Alcohol must not be available on promotion to anyone under 18.

- 8.5 Promotions must not be socially undesirable to the audience addressed by encouraging excessive consumption or irresponsible use.
- 8.6 Promoters must do everything reasonable to ensure that unsuitable or irresponsible material does not reach consumers or other recipients.
- 8.7 No promotion or promotional item should cause serious or widespread offence to consumers.

Children

- 8.8 Special care must be taken with promotions addressed to children or if products or items intended for adults might fall into the hands of children. (See Section 5: [Children](#)).

Availability

- 8.9 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and that they were capable of meeting that response.
- 8.10 Phrases such as "subject to availability" do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.
- 8.11 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited.
- 8.12 If, having made a reasonable estimate as in rule 8.9, it is unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside its control, the promoter must ensure relevant communication with applicants and consumers and offer a refund or a substitute product in accordance with rule 9.5.
- 8.13 If a prize promotion is widely advertised, the promoter must ensure the widespread availability of the requisite forms and any goods needed to establish proof of purchase.

Administration

- 8.14 Promoters must ensure that their promotions are conducted under proper supervision and make adequate resources available to administer them. Promoters, agencies and intermediaries should not give consumers justifiable grounds for complaint.

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

8.15.1 Promoters must award the prizes as described in their marketing communications or reasonable equivalents.

8.16 Promoters must normally fulfil applications within 30 days in accordance with rule 9.4 and refund money in accordance with rule 9.5.

Significant conditions for promotions

Background

Please see the [Children](#) section, the Prize Promotions sub-section and the CAP Help Note on [Promotions with Prizes](#).

8.17 Before purchase or, if no purchase is required, before or at the time of entry or application, promoters must communicate all applicable significant conditions. Significant conditions include:

8.17.1 How to participate

How to participate, including significant conditions and costs, and other major factors reasonably likely to influence consumers' decision or understanding about the promotion

8.17.2 Free-entry route explanation

Any free-entry route should be explained clearly and prominently

8.17.3 Start date

The start date, if applicable

8.17.4 Closing date

8.17.4.a A prominent closing date, if applicable, for purchases and submissions of entries or claims. Closing dates are not always necessary, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer) if the offer is and is stated to be "subject to availability"; promotions limited only by the availability of promotional packs (gifts with a purchase, extra-volume packs and reduced-price packs) and loyalty schemes run on an open-ended basis

8.17.4.b Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and

promotions addressed to or targeted at children always need a closing date

8.17.4.c Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers

8.17.4.d Promoters must state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers

8.17.4.e Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed. If they are changed, promoters must do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged

8.17.5 Proof of purchase

Any proof of purchase requirements

8.17.6 Prizes and gifts

Promoters must specify the number and nature of prizes or gifts, if applicable. If the exact number cannot be predetermined, a reasonable estimate of the number and a statement of their nature must be made. Promoters must:

8.17.6.a distinguish those prizes that could be won, including estimated prize funds, from those prizes that will be won by someone by the end of the promotional period and

8.17.6.b state whether prizes are to be awarded in instalments or are to be shared among recipients

8.17.7 Restrictions

Geographical, personal or technological restrictions such as location, age or the need to access the Internet. Promoters must state any need to obtain permission to enter from an adult or employer

8.17.8 Availability

The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer

8.17.9 Promoter's name and address

Unless it is obvious from the context or if entry into an advertised promotion is only through a dedicated website containing that information in an easily

found format, the promoter's full name and correspondence address must be stated.

- 8.18 Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.

Prize promotions

Background

See CAP Help Note on [Promotions with Prizes](#).

- 8.19 Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any other term for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers "qualify" for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.
- 8.20 Promoters must not exaggerate consumers' chances of winning prizes. They must not include a consumer who has been awarded a gift in a list of prize winners.
- 8.21 Promoters must not claim or imply that consumers are luckier than they are. They must 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 a promotion if they have not.
- 8.21.1 Promoters must 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.
- 8.22 Promoters must not claim that consumers must respond by a specified date or within a specified time if they need not.

- 8.23 Promoters must avoid complex rules and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.
- 8.24 Promoters of prize draws must ensure that prizes are awarded in accordance with the laws of chance and, unless winners are selected by a computer process that produces verifiably random results, by an independent person, or under the supervision of an independent person.
- 8.25 Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.
- 8.26 In competitions, if the selection of a winning entry is open to subjective interpretation, an independent judge, or a panel that includes one independent member must be appointed. In either case, the judge or panel member must be demonstrably independent, especially from the competition's promoters and intermediaries and from the pool of entrants from which the eventual winner is picked. Those appointed to act as judges should be competent to judge the competition and their full names must be made available on request.
- 8.27 Withholding prizes (see rules 8.15.1 and 8.28.2) is justified only if participants have not met the qualifying criteria set out clearly in the rules of the promotion.
- 8.28 Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions must specify before or at the time of entry:
- 8.28.1 any restriction on the number of entries
 - 8.28.2 whether the promoter may substitute a cash alternative for any prize
 - 8.28.3 if more than 30 days after the closing date, the date by which prize winners will receive their prizes
 - 8.28.4 how and when winners will be notified of results
 - 8.28.5 how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and country of major prize winners and, if applicable, their winning entries.

Prizewinners must not be compromised by the publication of excessive personal information

8.28.6 in a competition, the criteria and mechanism for judging entries (for example, the most apt and original tiebreaker)

8.28.7 if relevant, who owns the copyright of the entries

8.28.8 if applicable, how the promoter will return the entries

8.28.9 any intention to use winners in post-event publicity.

Front-page flashes

8.29 Publishers announcing reader promotions on the front page or cover must ensure that consumers know whether they are expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy must appear on the front page or cover (see CAP Help Note on [Front-page Flashes](#)).

Trade incentives

8.30 Incentive schemes must be designed and implemented to take account of the interests of everyone involved and must not compromise the obligation of employees to give honest advice to consumers.

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

8.32 Incentive schemes and relevant promotions must make clear if a tax liability might arise.

Charity-linked promotions

8.33 Promotions run by third parties (for example commercial companies) claiming that participation will benefit a registered charity or cause must:

8.33.1 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

8.33.2 if it is not a registered charity, define its nature and objectives

8.33.3 specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated (see rule 8.34)


- 8.33.4 state if the promoter has imposed a limit on its contributions
- 8.33.5 not impose a cut-off point for contributions by consumers if an amount is stated for each purchase. 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
- 8.33.6 be able to show that targets set are realistic
- 8.33.7 not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product
- 8.33.8 if asked, make available to consumers a current or final total of contributions made
- 8.33.9 not directly encourage children to buy, or exhort children to persuade an adult to buy for them, a product that promotes charitable purposes.
- 8.34 Where a promotion states or implies that part of the price paid for goods or services will be given to a charity or cause, state the actual amount or percentage of the price that will be paid to the charity or cause.
 - 8.34.1 For any other promotion linked to a charity or where a third party states or implies that donations will be given to a charity or cause, the promotion must state the total (or a reasonable estimate) of the amount the charity or cause will receive.

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