

Promotions with prizes

Advertising Guidance (non-broadcast)

Legal, decent, honest and truthful



Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Advertising (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast marketing communications.

Advertising Guidance is intended to guide advertisers, agencies and media owners how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast advertisements, consult the CAP Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or you can log a written enquiry via our [online request form](#).

For advice on specific radio advertisements, consult the [Radio Centre](#), and for TV advertisements, [Clearcast](#).

For the full list of Advertising Guidance, please [visit our website](#).

CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or Radiocentre <http://www.radiocentre.org> for radio ads.

Background

These guidelines, drawn up by the CAP Executive, are intended to help marketers, agencies and media interpret the rules in the CAP Code. The Help Note is based on past ASA rulings. It neither constitutes new rules nor binds the ASA Council in the event of a complaint about a marketing communication that follows it. This guidance complements, not replaces, the CAP Code.

Section 8 applies to all promotions, even in media that would otherwise not be covered by the CAP Code, such as packaging or point of sale material. This Help Note specifically covers promotions that include prizes. All prize promotions are forms of promotional marketing but not all promotions are prize promotions.

A number of rules in section 8 of the CAP Code were amended in 2015 to achieve consistency with the Unfair Commercial Practices Directive and the Consumer Protection from Unfair Trading Regulations (CPRs), which implement that Directive in UK law. As always, promoters are encouraged to seek legal advice where relevant to ensure compliance with the law.

The Code

Promoters are urged to read the Code but, in short, it states that promotions must be prepared with a sense of responsibility to consumers and to society and reflect the spirit, not merely the letter, of the Code. Fundamentally, promoters are responsible for all aspects and all stages of their promotions and must avoid causing unnecessary disappointment. Promotions should be conducted equitably, promptly and efficiently and, notably, promoters must be seen to deal fairly and honourably with participants and potential participants.

Promoters should communicate in a manner that is clear and readily understandable by the intended audience. Participants must be able to retain conditions or easily access them throughout the promotion.

All marketing communications or other material referring to promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead. Practically, this means that promoters should state all rules, entry instructions, dates or deadlines and factors likely to influence a consumer's understanding of the promotion and ensure that their marketing communications explain these accurately, unambiguously and completely. In particular, the structure (or "mechanic") of the promotion should be clear to consumers.

Rule 8.17 lists significant conditions for all promotions, which should not be omitted if that omission is likely to mislead. These significant conditions which are likely to need to be clear upfront include, for example, the closing date. Rule 8.28 lists conditions specifically for prize promotions that should be stated before or at the time of entry (for example, any restriction on the number of entries). Participants should be able to retain conditions and instructions so it would be inappropriate, for example, to state them on the back of an entry form (rule 8.28). Publishing full terms and conditions on the promoter's website is likely to be acceptable, provided the initial promotional material includes the significant terms and states where the full terms and conditions can be found.

Promoters should not state or imply consumers have won if they have not and should not overstate the chance of winning. They should not create confusion between "gifts" and "prizes" (rules 8.19-8.21) and should not misrepresent the value, nature or number of prizes. Promoters should not withhold prizes (rule 8.27).

Promotions should be demonstrably fair. The awarding of prizes must be supervised by an independent judge, unless the prizes are randomly awarded by a computer process. Promoters who use a computer process to select winners must be able to show that the results are random (rules 8.24 and 8.26).

Promoters should not impede participation by, for example, including complex rules (rule 8.23) or applying unreasonable conditions to participation or collecting prizes.

Legality

The Code states:

“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 contact the Gambling Commission or seek legal advice if they are concerned their prize promotion might be an unlawful lottery.

Gifts and prizes

The distinction between prizes and gifts, or equivalent benefits, must always be clear.

The difference between “gifts” and “prizes” is explained in rule 8.19: “gifts” are offered to a significant proportion of participants whereas an item offered to a small minority may be more likely to be described as a ‘prize’. It should be clear to consumers whether they are being offered a gift or the chance to win a prize.

Promoters should be wary of attempting to describe gifts and prizes under an umbrella term (such as “awards”) because unless made clear by the context, this is likely to cause confusion.

When it comes to the availability of gifts and other promotional items promoters must be able to demonstrate that they have made a reasonable estimate of the likely response. Once the reasonable estimate has been made, promoters will need to be capable of meeting it, or ensure they provide sufficient information to allow consumers to make an informed decision on whether or not to participate. This information must be presented clearly and in a timely fashion.

Implying consumers are luckier than they are

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

Terms such as “finalist” or “next stage” should be used only where consumers have progressed to an advanced stage of the promotion and not when consumers have merely been offered entry to the promotion.

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

Promoters who use terms such as “last chance to enter” to inform consumers that the promotion is coming to an end should ensure that their meaning is clear. Promoters who issue materials that claim “last chance” or similar should not re-advertise the promotion.

Implying consumers have won

The Code states that: “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” (rule 8.21.1). Depending on the context, “gifts” have the potential to be considered “other equivalent benefit[s]” for the purposes of this rule.

Winners must not incur costs to claim a prize or equivalent benefit. Promoters may require consumers to incur costs to enter but must ensure that the winner can make arrangements to receive their prize or gift without incurring cost. This means promoters must not invite consumers to call a telephone number to leave their contact details in order to claim a gift or prize if there is any charge for that call (promoters may invite consumers to contact them on a Freephone number).

Promoters must take particular care to ensure that their description of a prize is clear. If consumers need to incur costs in order to take advantage of (rather than make arrangements to receive) their prize, the description of the prize must make this clear. For example, if a prize is described as “two nights at a five-star hotel”, the promoter need not pay the consumer’s travel costs to reach the hotel, but describing the same prize as “a luxury mini-break” would not make clear enough that the travel costs were the consumer’s responsibility: the promoter might be found in breach of rule 8.21.1 on the grounds that the consumer had to incur travel costs to claim their luxury mini-break. Promoters are urged to seek legal advice.

For the avoidance of doubt, this rule and guidance applies to prizes or equivalent benefits (including “gifts”) which are given away in prize promotions and would not be included in the definition of free gifts in the joint CAP & BCAP guidance on the use of “free”; that guidance deals with “free” offers for which it is acceptable to expect the consumer to pay the unavoidable cost of responding and collecting or paying for delivery of the “free” item.

Promoters should not use larger font, emboldened text or formatting to unduly emphasise phrases or parts of sentences that encourage consumers to read claims out of context, if the overall impression created is likely to mislead consumers.

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

Promoters should not describe prospective prize award ceremonies (or similar) in a way that misleadingly implies consumers will attend. Promoters must not include a consumer's name amongst a list of prize winners if the promoter is merely offering a gift or the chance to enter a prize draw.

Prizes

Promoters must specify the number and nature of prizes where omitting that information would be likely to mislead.

Promoters may only justify withholding prizes if consumers have not met clear criteria set out in the promotional rules or if promoters have told consumers at the outset that insufficient entries or entries of insufficient quality will lead to the withholding of prizes. If there is a winner of the prize, the prize or its reasonable equivalent must be awarded, normally within 30 days.

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

Promoters of prize draws, including instant wins, must ensure that prizes are awarded in accordance with the laws of chance. Choosing winners using a computerised selection process is acceptable as long as that process is demonstrably fair and genuinely random (rule 8.24).

Unless chosen by a computer process which produces verifiably random results, all prize promotions should involve an observer or judge who is demonstrably independent of the promotion and the entrants. To ensure that the judge or observer is demonstrably independent, the judge or observer should not be an employee of the promoter, an employee of an agency retained by the promoter, or have an on-going contractual arrangement with the promoter (they may, of course, have a contract with the promoter that is specific to their role as an independent judge). If selection of a winning entry is open to subjective interpretation, a competent and independent judge should be appointed.

Closing dates

Promoters should state clearly and prominently any entry deadlines.

Promoters should not change the closing date unless forced to do so by unavoidable circumstances outside their control. In addition promoters must be able to show that changing the date will not disadvantage those who have already participated or that not changing the date would be unfair to those who sought to participate within the original terms.

See CAP's AdviceOnline entry on closing dates for more information about how the ASA is likely to interpret this rule.

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

Presentation of prize promotions

The points below apply to all promoters, especially those who use direct marketing.

Promoters should avoid unnecessarily complex, confusing or legalistic language.

Promoters should ensure that the page design, layout or format of the promotion is not misleading. Promoters should not embolden or otherwise emphasise claims to create an overall impression that is not true.

Promoters should ensure that the source, origin and character of promotions with prizes is clear. Promotions sent by direct mail should not mislead about content of envelopes, for example, by stating or implying that they come from an official source or contain private information if they do not. In isolation, claims such as "private and confidential" and "official notice" are likely to mislead by exaggerating the importance of prize draw mailings.

Promoters should take care when making claims that are visible through the windows of envelopes not to lead recipients into thinking something that is not true.

Promoters should ensure that fake cheques, or similar, used to give consumers an indication of what they could win are not presented as real. Printing “sample” diagonally across such cheques is likely to ensure that consumers are not misled.

Promoters should not misrepresent the areas in which promotions with prizes are being promoted; they should not imply, for example, that the winner will come from the UK if that might not be true. Promoters should state if the promotion is advertised in different formats if consumers might otherwise be misled about, for example, the number of individual prize pools or the likely number of entrants.

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 if the omission of this information is likely to mislead.

Newspapers and magazines need not state their name and address in promotional copy for their own promotions if that information can easily be found elsewhere in the publication.

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

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