

# Amended rules on sales promotions

CAP's Regulatory Statement



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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 amending some of its rules for sales promotions.**

In late 2014, CAP conducted a public consultation which proposed amending some of its rules. Most of the proposed amendments were aimed at ensuring the Code's consistency with the European Unfair Commercial Practices Directive (UCPD) and the Consumer Protection from Unfair Trading Regulations (CPRs), which implement that Directive in UK law. Three additional changes were prompted by separate considerations and brought into this consultation for the sake of expediency.

CAP received ten responses to this consultation; those responses provided helpful detailed feedback on the proposed amendments. CAP's analysis of those responses is set out in the [evaluation table](#) and CAP has now published its final amendments.

In addition to amending the wording of some of the sales promotions rules, CAP has also reordered a small number of the rules, to follow a more intuitive order. The final rules are provided in this document, along with the rationale for the amendments. The Committee considers them to be fair and proportionate, and that the changes appropriately balance the rights of promoters with the need to protect consumers.

**The rules will come into effect on Friday 1<sup>st</sup> May 2015 at which time the ASA will begin to enforce compliance with them.**

## 2. Background

### 2.1 Sales promotion rules

The CAP Code includes a section which deals specifically with sales promotions<sup>1</sup>.

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. Section 8: Sales promotions contains specific sub-sections that pertain to availability, 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 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 Regulations (CPRs). In recent years, legal interpretation of the Directive has provided clarification of how member states should enforce this directive.

CAP benefits from over 50 years of regulating this sector, and is experienced in developing rules to address specific practices which provide consumer protection while allowing industry to flourish. CAP continues to believe that it is appropriate to hold detailed rules for sales promotions, to remind promoters of their responsibilities to consumers as well as what the law expects, and in doing so, ensure that the Codes continue to provide an appropriate level of protection for consumers.

The UCPD sets out a number of banned practices and due to its maximum harmonisation requirement, CAP code rules which fall within the scope of that directive cannot create further banned practices. Furthermore, the UCPD requires promoters to clearly communicate information in order to allow consumers to make informed decisions and prevents promoters from omitting material information, if that omission is likely to mislead consumers.

Most of the final amendments allow greater flexibility for promoters to plan their promotions while ensuring that all the information required by consumers in order to make a decision on whether to participate, is clearly provided at each relevant stage.

Three further amendments have been made which do not directly reflect the UCPD and the CPRs, but were prompted by separate considerations.

### 2.2 The decision to consult

In light of increased clarity around the interpretation of the CPRs, CAP took legal advice on the sales promotion rules and subsequently decided to amend some of those rules to ensure consistency with the CPRs. It simultaneously decided to consult on three additional rules which had recently been highlighted as requiring amendments.

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<sup>1</sup> 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.

CAP decided to publicly consult on its proposed changes in order to give external stakeholders the opportunity to give their feedback into how those changes might affect industry and consumers.

### 3. Amendments to the Sales Promotions section of the CAP Code

This section discusses the amended rules which CAP will implement and summarises the rationale behind those amendments. Due to the length and complexity of the sales promotion section of the CAP code, not all of the sales promotion rules are included here – see Annex B for the full section including amendments.

As the rules are put into practice, CAP will develop supporting guidance wherever it is needed. Specific rules which are likely to require guidance are identified below.

#### Rules 8.1 – 8.8

Remain unchanged.

**8.9** *Phrases such as "subject to availability" do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.*

This rule was not included in the consultation and its wording has not changed, however, CAP has changed the order of this rule, and those relating to it, in order to make the context clearer.

**8.10** *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, presented clearly and in a timely fashion, to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.*

This rule has been changed to prevent it from creating an unlawful banned practice. The amendment adds flexibility for promoters to run a promotion where they know that response might outstrip demand, as long as they clearly provide relevant information to consumers to inform them about how likely they are to benefit. The level of detail accorded to making a reasonable estimate and provision of sufficient information is likely to vary between different types of promotions and their likely participants. CAP will provide supporting guidance on the practical application of the rule in due course.

**8.11** *If promoters rely on being able to meet the estimated response 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, in cases of any likely detriment, offer a refund or a reasonable substitute product.*

This rule has been amended to reflect the amendments to the previous rule, and clarify what measures a promoter would be expected to take in the circumstances described.

**8.12** *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 made sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.*

This rule has been amended to give promoters more flexibility to run the type of promotions described, as long as limitations on availability are clearly communicated to consumers.

### **Rules 8.13 – 8.15**

Remain unchanged.

#### **8.15.1** *Promoters must award the prizes as described in their marketing communications or reasonable equivalents, normally within 30 days*

CAP has deleted rule 8.16 as it refers to rules in section 9, which is likely to be deleted ([see consultation](#)). CAP considers that the harm prevented by this rule is addressed by rule 8.15.1. CAP has made a further addition to rule 8.15.1 to ensure that the timeframe for fulfilling prizes, which reflects custom and practice within the sales promotion industry, has been carried over to rule 8.15.1.

#### **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.*

This rule has been **deleted**; CAP considers the harm it addresses continues to be prevented by the amended rule 8.15.1.

#### **8.17** *All marketing communications or other material referring to sales promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead. Significant conditions or information may, depending on the circumstances, include:*

This rule has been amended to reflect promoters' obligation not to mislead consumers by omitting material information.

### **Rules 8.17.1 – 8.17.4.a**

Remain unchanged.

#### **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*

This rule has been amended to allow added flexibility for promoters to run the types of promotions described without a closing date, if appropriate, but indicates that a closing date will probably be needed in most circumstances. CAP intends to draft guidance to support this rule in due course.

#### **Rule 8.17.4.c**

Remains unchanged.

#### **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*

This rule has been amended to allow added flexibility while reminding promoters of their obligation not to mislead by omission.

**8.17.4.e** *Closing dates must not be changed unless unavoidable circumstances beyond the control of the promoter make it necessary and either not to change the date would be unfair to those who sought to participate within the original terms, or those who sought to participate within the original terms will not be disadvantaged by the change.*

This rule has been amended to reflect the limited circumstances which CAP consider may make it acceptable to change a closing date, and the considerations that it would expect promoters to make in such circumstances to prevent consumers from being disadvantaged. CAP will develop guidance to support this rule in due course, which could expand on the kind of circumstances that the ASA would consider to be 'unavoidable', and also changes to closing dates which were unlikely to disadvantage participants.

### **Rules 8.17.5 – 8.17.7**

Remain unchanged.

**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.*

This rule has been amended to reflect the need for promoters to clearly provide relevant information to consumers and underline the need for promoters to provide clear information about any limited availability of promotional packs.

### **Rules 8.17.9 – 8.18**

Remain unchanged.

**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.*

This rule has been amended to be less prescriptive about the kind of terminology promoters are able to use, while continuing to require promoters not to use terms which may mislead consumers.

### **Rules 8.20 – 8.22**

Remain unchanged.



**8.23** *Promoters must avoid rules that are too complex to be understood and they must only exceptionally supplement or amend conditions of entry. In such circumstances, promoters must tell participants how to obtain the supplemental or amended rules and they must contain nothing that could reasonably have influenced consumers against buying or participating.*

This rule has been amended to include an element of flexibility for promoters when considering what would be an appropriate level of complexity for a set of rules, while clarifying what might constitute acceptable circumstances for changing those rules.

#### **Rule 8.24**

Remains unchanged.

**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.*

This rule has been amended to reflect the recent CJEU ruling which clarifies that participants in instant-win promotions must incur no cost from claiming their prize. CAP intends to develop supporting guidance in due course.

**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 on all marketing communications or other material referring to them, the following information, clearly before or at the time of entry, where the omission of any of the specified items is likely to mislead.*

This rule has been amended to allow added flexibility while reminding promoters of their obligation not to mislead by omission.

#### **Rules 8.28.1 – 8.28.4**

Remain unchanged.

**8.28.5** *Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries except in the limited circumstances where promoters are subject to a 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*

This rule has been amended to reflect the statutory obligations which might prevent an organisation from publishing winners' details. To CAP's knowledge the only organisation affected by the law in this way is NS&I. This amendment does not refer to the Data Protection Act, which does not preclude promoters from complying with this rule. CAP intends to develop supporting guidance in due course.

#### **Rules 8.28.6 – 8.34.1**

Remain unchanged.

## Annex A: Final amended rules (with changes marked up)

Please note change to order of rules 8.9, 8.10, 8.11, 8.12; see Annex B for clean set of rules with amended numbering.

**8.10** Phrases such as "subject to availability" do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.

**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, presented clearly and in a timely fashion, to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

**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, in cases of any likely detriment, offer a refund or a reasonable substitute product.

**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 made sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.

**8.15.1** Promoters must award the prizes as described in their marketing communications or reasonable equivalents, normally within 30 days.

~~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.~~

**8.17** All marketing communications or other material referring to sales promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead. Significant conditions or information may, depending on the circumstances, include:

**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

**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

**8.17.4.e** Closing dates must not be changed unless unavoidable circumstances beyond the control of the promoter make it necessary and either not to change the date would be unfair to those who sought to participate within the original terms, or those who sought to participate within the original terms will not be disadvantaged by the change.

[Replaces:

**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]*

**8.17.8** 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.**

**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.

**8.23** Promoters must avoid rules **that are too complex to be understood** and they must only exceptionally supplement **or amend** conditions of entry with extra rules. In such circumstances, promoters must tell participants how to obtain **the supplemental or amended rules** and they must contain nothing that could reasonably have influenced consumers against buying or participating.

**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.

**8.28** Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions **must specify on all marketing communications or other material referring to them, the following information, clearly before or at the time of entry, where the omission of any of the specified items is likely to mislead.**

**8.28.5** Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries **except in the limited circumstances where promoters are subject to a 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

## Annex B: Final Section 8: Clean version

### 08 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** Phrases such as “subject to availability” do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.

**8.10** 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, presented clearly and in a timely fashion, to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

**8.11** If promoters rely on being able to meet the estimated response 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, in cases of any likely detriment, offer a refund or a reasonable substitute product.

**8.12** 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 made sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.

**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, normally within 30 days.

**8.16** [Rule deleted 1st May 2015]

### **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** All marketing communications or other material referring to sales promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead. Significant conditions or information may, depending on the circumstances, 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 are likely to 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, if the omission of that information is likely to mislead

**8.17.4.e** Closing dates must not be changed unless unavoidable circumstances beyond the control of the promoter make it necessary and either not to change the date would be unfair to those who sought to participate within the original terms, or those who sought to participate within the original terms will not be disadvantaged by the change.

### **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. Any limitation on availability should be sufficiently clear for a consumer to assess whether participation is worthwhile.

#### **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, 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.

**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 rules that are too complex to be understood and they must only exceptionally supplement or amend conditions of entry with extra rules. In such circumstances,

promoters must tell participants how to obtain the supplemental or amended rules and they 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, 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 on all marketing communications or other material referring to them, the following information, clearly before or at the time of entry, where the omission of any of the specified items is likely to mislead.

**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 prizewinners will receive their prizes

**8.28.4** how and when winners will be notified of results

**8.28.5** Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries except in the limited circumstances where promoters are subject to a 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

**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 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.

## Contact us

Committee of Advertising Practice  
Mid City Place, 71 High Holborn  
London WC1V 6QT

Telephone: 020 7492 2200  
Textphone: 020 7242 8159  
Email: [enquiries@cap.org.uk](mailto:enquiries@cap.org.uk)

[www.cap.org.uk](http://www.cap.org.uk)

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