Compliance Report

On-Pack Sales Promotions Survey 2003



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1 **SUMMARY**

This is the first time that the ASA has undertaken a survey into the compliance rate of on-pack sales promotions with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).

A representative sample of 348 sales promotions, that appeared in supermarkets around the UK between February and July 2003, were collected and assessed under the CAP Code.¹ Of those, 57 were duplicates, i.e. promotions with identical copy and images but perhaps in different sizes or formats. Excluding duplicates, therefore, 291 sales promotions were scrutinized.

Excluding duplicates, 16 promotions (5.5%) were found to breach the Code, giving an overall compliance rate of 94.5%. Where a breach was found, the Compliance team contacted the promoter and told it to ensure all promotions complied fully with the Code requirements and advised it to make use of the services offered by the CAP Copy Advice team in future. None of the 16 promotions found to breach the Code were the subject of complaints to the ASA.

Of the total sample excluding duplicates, premium promotions represented 60.1%, prize draws and competitions represented 23.7% and instant win promotions represented 16.2%. Both premium promotions and prize draws and competitions contained four breaches and instant win promotions contained eight breaches. Full results can be found on page nine.

The breaches found by the Compliance team were regarded as 'technical', rather than 'platform', since they constituted minor errors or oversights rather than fundamental flaws in the design, mechanic, tone or content of the promotion.

The breaches found by the team were also separated into 'content' breaches and 'administration' breaches. The content of all 291 promotions was checked against the Code. The compliance rate was 96.6%. In addition, 23 promotions whose closing dates had passed were randomly selected and the promoters contacted to ensure that the promotions had been administered in accordance with the Code. The compliance rate of those was a disappointing 74%. All fell down because the promoters were not able to demonstrate that prize draws were conducted, or instant win prizes distributed, under the supervision of an independent observer.

Although the overall compliance rate in the Survey is high, promoters must ensure that their promotions are administered properly. Both CAP and the ASA will continue to monitor the compliance of on-pack sales promotions and will continue to work with the industry to improve the administration of promotions.

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¹ All advertisements were assessed under the 11th edition of the British Code of Advertising, Sales Promotion and Direct Marketing that was published on the 4 March 2003.

2 INTRODUCTION

2.1 Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) that applies to non-broadcast marketing communications. It is responsible for ensuring that the self-regulatory system works in the public interest. It achieves this by investigating complaints, identifying and resolving issues by research and by promoting and enforcing high standards in marketing by ensuring that everyone who commissions, prepares and publishes marketing communications observes the CAP Code.

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

The Compliance team works to ensure that marketing communications comply with the CAP Code and ASA decisions. The team follows-up ASA adjudications, monitors marketing communications and takes immediate action to ensure the removal of obviously problematic marketing communications. One of the team's objectives is to create a level-playing field for marketers within each sector and it ensures this by communicating decisions that have sector-wide ramifications. The Compliance team also conducts surveys to assess compliance rates in particular industries, sectors or media; those surveys also help to identify marketing trends and to anticipate areas of concern that need to be addressed by the ASA and/or CAP.

2.2 <u>The Sales Promotion Rules and the CAP Help Note on Promotions with Prizes</u>

The Code lays down the criteria for acceptable marketing communications and states that all marketing communications should be legal, decent, honest and truthful. Specific rules apply to sectors of advertising such as alcoholic drinks, children, motoring, weight control, distance selling and sales promotions.

The Code's rules apply to all non-broadcast media in the UK, ranging from advertisements in the press, direct mailings and on-pack sales promotions, to roadside hoardings, SMS text messages and Internet pop-up and banner advertisements. The Code's rules on sales promotions state that the promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

In April 2000, CAP produced a Help Note on Promotions with Prizes which provided detailed guidance on complying with the Sales Promotion rules in the CAP Code.

A list of clauses of the Code referred to within the Survey and the Help Note can be found in the Appendix. The full CAP Code can be viewed at or downloaded from www.cap.org.uk.

2.3 Sales Promotions Examined in the Survey

On-pack sales promotions provide a direct or indirect additional benefit, usually on a temporary basis, that makes goods or services more attractive to consumers. Such promotions include free prize draws, competitions, instant wins, token or voucher collection schemes and refunds for purchasing a product for the first time. Other promotions simply have a free 'gift' found attached to or inside the product. The sales promotions identified in the course of the Survey were communicated in a number of ways. These were the most common:

- Promotion appeared on the outside of the product packaging or label (often detailing either an instant win promotion or referring consumers to further terms and conditions on the inside or reverse of the label);
- promotion detailed on a multi-page mini leaflet or label stuck to the product;
- promotion detailed on a neck-collar or tag, attached to bottles or jars;
- promotion printed onto plastic, shrink wrapped around the product; and
- promotion detailed on the outside of the product packaging for a free item that could be found inside, or attached to, the product.

2.4 2003 Survey Objectives

The purpose of the Survey was to:

- assess compliance rates for a representative sample of on-pack sales promotions sourced from UK supermarkets;
- randomly select sales promotions whose closing dates had already passed and contact the promoter to obtain information to determine whether the promotions were administered and conducted in accordance with the Code:
- identify any potential problem areas, either by sector or promotional technique, and ascertain whether further action was appropriate;
- if appropriate, contact the promoter responsible for sales promotions that appeared to break the Code and obtain an assurance that future promotions would comply fully with the Code's requirements; and

•	as part of ongoing compliance work, an encouragement to good practice.	, act as a deterrent to bad practice an	d

3 METHODOLOGY

The Survey sample consisted of a representative selection of around 50 on-pack sales promotions retrieved monthly over a six-month period. The promotions appeared on products collected from typical UK supermarkets between February and July 2003. Mintel, a media intelligence supplier, collected the monthly sample by using field associates resident in selected cities around the UK. By using the services of Mintel, the ASA was able to ensure the sample selection was entirely independent.

Over the six-month period, 348 promotions, of which 57 promotions were duplicates, were assessed against the requirements of edition 11 of the CAP Code.

The Compliance team assessed the promotions in two ways.

Firstly it determined, from the promotional packaging alone, whether promotions in the sample contained breaches of the Code. Amongst other things, the team looked at whether free entry routes were clear, whether significant terms and conditions were visible before purchase, whether consumers were able to retain the promoter's name and address once they had participated in a promotion and whether 'instant win' was the correct way of describing promotions if consumers were not immediately aware of what they had won.

The second assessment could not be carried out by scrutinizing promotional packaging alone. The team randomly selected approximately six promotions, whose closing dates had already passed, from each month's sample and wrote to the promoters to ask them to demonstrate that the promotions had been administered properly. Amongst other things, the team's assessment sought to establish whether promoters had made reasonable estimates of the likely response to a promotion, whether contingency plans were in place to take into account a high response, whether promoters were able to make available a list of major prizewinners, whether an independent judge had been appointed to assess entries open to subjective interpretation, whether an independent observer had supervised prize draws and whether promoters had independently audited statements to confirm that winning labels, tickets or numbers had been fairly and randomly distributed in promotional packets.

The figures given in the Survey relate to the sample of promotions excluding duplicates.

4 FINDINGS

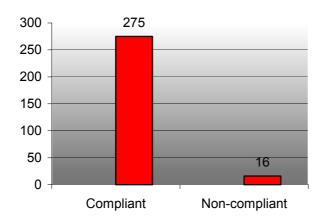
4.1 Overall Compliance Rate

The Survey sought to establish what proportion of sales promotions complied with and were administered in accordance with the Code.

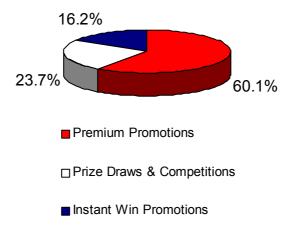
Including duplicates: of 348 promotions in the sample, 24 broke the Code - a compliance rate of 93.1%.

Excluding duplicates: of 291 promotions in the sample, 16 broke the Code - a compliance rate of 94.5%.

Number of compliant and non-compliant promotions from the sample (excluding duplicates)



4.2 Percentage of Promotions by Technique (excluding duplicates)



Compliance by Promotion Technique (excluding duplicates)

Promotion Technique	Number in sample and %	Problem promotions	Problem rate within promotion technique %	As % of problematic total
Premium Promotions	175 60.1%	4	2.3	25
Prize Draws & Competitions	69 23.7%	4	5.8	25
Instant Win Promotions	47 16.2%	8	17	50
TOTAL	291 100%	16	-	100

4.2.1 <u>Premium Promotions</u>

The sample included a wide variety of premium promotions. In fact, premium promotions were the highest represented promotional technique found in the Survey with 175 in total (60.1% of the entire sample, excluding duplicates).

A premium promotion is a scheme in which participants qualify for the same gift, benefit or item irrespective of chance. Although not a promotion with a prize, consumers are often offered a free gift at the same time as entry to a prize draw. Premium promotions include:

- voucher / token collect schemes to receive promotional products, reduced prices for holidays or weekend breaks, get free or cheaper entry to gyms or tourist attractions, and to contribute towards a charitable organisation or school scheme;
- offers that required the consumer to send the promoter proof of purchase, and sometimes an additional payment, in return for promotional goods;
- 'money-off' coupon entitling the consumer to money off the next purchase of the product;
- 'try me free' offers, whereby consumers could obtain a refund on the price of the product either for not being completely satisfied, for providing the promoter with their opinion of the product or in return for completing a questionnaire; and
- 'free gift with product' offers where the item could either be attached to the outside or found inside of the product.

Given the total number of promotions identified under this technique, the compliance rate was very high. Only four promotions were found to breach the Code's requirements; a compliance rate of 97.7% (excluding duplicates).

Two were in breach of clause 34.1h because consumers could not retain the promoter's name and address details once they had participated in the promotion i.e. when sending off their completed application form.

One promotion was in breach of clause 34.1a, c, d and h, because the outside of the label did not state important terms and conditions of the promotion (i.e. the closing date for receipt of applications and that a payment and further purchases were necessary in order to receive the promotional product). Again, the reverse of the label did not detail the promoter's full name and business address in any way that could be retained by the consumer. As a charity-linked promotion, it also breached clause 37.1c because the promoter had not specified exactly what would be gained by the named charity or stated the basis on which the contribution would be calculated.

Finally, the fourth promotion, which ran alongside a prize promotion, breached clause 34.1a. The label promoted the existence of promotional offers, but neither the front nor reverse of the label stated what those offers were. The nature of the offers should have been made clear at point of sale, i.e. on the label, since that may have influenced the consumers' decision of or understanding about whether to participate in the promotion and purchase the product.

All of the above four promotions were identified as 'content' breaches.

22.9% of premium promotions identified used the technique of either attaching or enclosing a free item with the product. No breaches were found with any promotions using this technique.

4.2.2 **Prize Draws and Competitions**

There were a total of 69 prize draws and competitions identified (23.7% of the total sample, excluding duplicates).

A prize draw is a scheme in which prizes are allocated by chance but no charge is imposed, or purchase of goods or services required, in order to participate. In traditional prize draws, the winner is chosen at random from all valid entries. A prize competition is a scheme in which prizes are allocated on the basis of skill and for which a charge is often imposed or the purchase of goods or services required. Promoters usually require consumers to complete a tie-breaker so that the winner can be selected on the basis of skill; often they initially filter out entries by requiring consumers to answer one or more questions first.

In line with clause 33.2 of the Code, promoters must avoid running illegal lotteries by offering free entry, or a free route of entry, to their chance-based promotions or by ensuring that their promotions are skill-based.

Of the total number of promotions identified under this technique, four were found to breach the Code's requirements; a compliance rate of 94.2% within this technique (excluding duplicates).

Two promotions breached clause 34.1d. They stated on the outside of the packaging 'no purchase necessary', but gave no further details on the outside on how to enter without paying. There were also other problems with the two promotions: one did not state the closing date on the outside of the packaging, in breach of clause 34.1c, and the other did not explain the nature of the prize as required by clause 34.1e. Such significant terms and conditions should be specified clearly before entry.

Finally, two promotions were 'administration' breaches: they breached clause 35.7 because the prizes were not awarded under the supervision of an independent observer.

4.2.3 Instant Win Promotions

There was a total of 47 instant win promotions identified (16.2% of the total sample, excluding duplicates).

Instant win promotions are also schemes in which prizes are allocated by chance but no charge is imposed, or purchase of goods or services required, in order to participate. They differ from traditional prize draws, however, in that consumers get any winnings at once or know immediately what they have won and how to claim it without delay, unreasonable cost or administrative barriers. Since instant win promotions require no skill in order to participate, the free entry route must be available.

Of the total number of promotions identified under this technique, eight were found to breach the Code's requirements; the lowest compliance rate (83%, excluding duplicates) of all of the techniques identified.

Of the 47 instant win promotions scrutinized, two breached clause 34.1d of the Code. In one promotion, the 'no purchase necessary' route was not detailed on the outside of the packaging. Information on how to enter the promotion through this route was visible only after the packaging was opened, therefore requiring the consumer to purchase the product. The other was problematic because consumers had to call an 0845 telephone number (charged at local rate) to obtain address details in order to enter through the free entry route; the team considered that since consumers were required to call both an 0845 telephone number and post their entries to the promoter, this was an unnecessary administrative barrier.

Two promotions that used SMS text messaging response channels were identified from the promotional literature as problematic under clause 35.8 because the promotions used phrases such as '...instant win prizes' and 'Win...Instantly', yet participants did not know immediately or instantly if and what they had won. Each promotion required consumers to text a code inside the wrapper to the promoter, who then sent a text message back confirming if they were a winner. Because these promotions breached clause 35.8, which states that participants in instant win promotions should get their winnings at

once or should know immediately what they have won and how to claim without delay, unreasonable cost or administrative barriers, they have been mentioned in this, and not the previous, section.

The remaining four problematic promotions were identified as 'administration' breaches. In line with clause 35.8 of the Code, each promoter was asked to provide an independently audited statement to verify that all instant win tickets, tokens or numbers had been distributed or made available for distribution in a fair and random manner.

Of those four promotions, either no audited statement could be produced or the individual who had produced the statement was not considered to be truly independent of both the promoter and its agencies. Who the ASA might consider to be independent enough to produce such a statement is discussed in more detail in the Content Breaches vs. Administration Breaches Section.

4.3 Compliance by Sector (excluding duplicates)

Sector	Number in sample and %	Problematic Promotion	Problem rate within sector%	As % of problematic total
Food	176 60.5%	9	5.1	56.25
Drink	73 25.1%	5	6.8	31.25
Household	23 7.9%	1	4.3	6.25
Health & Beauty	12 4.1%	1	8.3	6.25
Pet Food	7 2.4%	0	0	0
TOTAL	291 100%	16	-	100

Since UK supermarkets, which predominantly sell food and drink products, were the source of the sales promotions featured in the Survey, it is unsurprising that 85.6% of promotions appeared on food and drink products. The proportion of breaches in each of those sectors was roughly equivalent to the number of promotions.

Of the 14 problematic promotions found on food and drink products, ten were identified as 'content' breaches from looking at the promotional literature and the remaining four were found to be 'administration' breaches.

The five problematic promotions from the drinks sector appeared on both soft and alcoholic drinks: three on soft drinks and two on alcoholic drinks. The reason for the breaches was unrelated to the alcoholic/non-alcoholic nature of the products.

No one sector was responsible for a disproportionate number of beaches.

4.4 Compliance by Month (excluding duplicates)

Month	Number of promotions	Problematic	Problematic rate per month %	As a % of problematic total
February	48	2	4.2	12.5
March	47	2	4.3	12.5
April	40	4	10	25
May	65	6	9.2	37.5
June	31	0	0	0
July	60	2	3.3	12.5
Total	291	16	-	100

The above table breaks down the number of sales promotions per month and the compliance rate. The most promotions were collected in May, which may indicate why more problematic promotions were identified in that month than others. The relative percentage of problematic promotions in that month was not, however, the highest in the six month period of the Survey. It is difficult to observe any significant monthly trends over the six month period.

4.5 <u>Promotions Specifically Targeted at or Likely to Appeal to Children</u> (excluding duplicates)

Promotion Technique	Number in sample and % targeted at children	Problem promotions	Problem rate within promotion technique %	As % of problematic total
Premium Promotions	47 58.75%	2	4.3	40
Prize Draws & Competitions	19 23.75%	0	0	0
Instant Win Promotions	14 17.5%	3	21	60
TOTAL	80	5	-	100

Out of the total number of sales promotions in the sample, 80 were identified as being either specifically targeted at or likely to appeal to children (i.e. people under the age of 16). Of those 80 promotions, five were found to breach the Code; a compliance rate of 93.8%.

The two 'premium promotion' breaches were 'content' breaches. The first promotion, which ran alongside a prize promotion, breached clause 34.1a. The

label promoted the existence of promotional offers, but neither the front nor reverse of the label stated what those offers were. The second breached clause 34.1a, c, d and h (among other clauses) because the outside of the label did not state important terms and conditions of the promotion (i.e. the closing date for receipt of applications and that a payment and further purchases were necessary in order to receive the promotional product).

With the increasing popularity of SMS text messaging, especially amongst children, this is becoming a popular channel by which to encourage consumers to respond to promotions. Two self-styled 'instant win' promotions on snack food products that used this channel breached the Code because the participants did not know immediately or instantly if and what they had won. The third 'instant win' breach was an 'administration' breach: the promoter was not able to provide an independently verified statement that the prizes were distributed fairly and randomly.

Promoters should take particular care over promotions that are likely to appeal to children. They must state clearly all significant conditions and must avoid disappointing the consumer by misleading them to believe they will know instantly that they are a winner when that is not the case.

32 of the 47 premium promotions identified used the 'free item' technique (e.g. free promotional toys or stickers inside cereal packets). That technique provides an immediate incentive and has the additional benefit of simplicity; there is little need for complicated terms and conditions. No breaches were found in any of the 'free item' promotions identified.

4.6 Content Breaches vs. Administration Breaches

Of the 16 sales promotions found to breach the Code from the total sample, ten were identified as 'content' breaches (i.e. problematic from looking at the content of the promotion literature alone). For example, participants could not retain the promoter's name and address, important terms and conditions were not stated clearly enough, 'free entry' routes were not explained or 'instant win' was used to describe a promotion when participants did not know immediately if or what they had won.

The remaining six, which derived from an administration sample (of 23 promotions) chosen at random from the total sample, were identified as 'administration' breaches. For example, the promoter could not demonstrate that prize draws were conducted, or instant win prizes distributed, under the supervision of an independent observer.

The compliance rate for 'content' breach promotions was 96.6%. The compliance rate for 'administration' breach promotions, however, was a disappointing 74%.

Although the administration sample chosen randomly was small (only 23 promotions), all six breaches resulted from the promoter's inability to

demonstrate independence in either the supervision of the prize draw (two breaches) or the verification of the fair and random distribution of instant win prizes (four breaches).

These results demonstrate that although the content of the vast majority of promotions conforms to the CAP Code, promoters must take greater care to ensure promotions are administered properly. In particular, they must have an independent observer supervising both prize draws and the distribution of instant win prizes.

The ASA is likely to consider that a promoter's solicitor, accountant or auditor is impartial and independent enough to undertake this requirement. Alternatively, promoters are advised to contact the Institute of Sales Promotion (ISP) for further assistance.

4.7 **Complaints**

Over the last five years, the ASA has formally investigated and upheld only six complaints and informally resolved 12 complaints concerning on-pack sales promotions appearing on goods typically purchased in supermarkets. Two of those formal investigations were published during the Survey period between February and July 2003 (see 6 below).

The ASA does not receive many complaints about on-pack sales promotions in comparison to other media. One reason could be that the Sales Promotion rules are technical and it is not obviously apparent to consumers when or if they have been breached. Consumers are unlikely to complain to the ASA about some of the problems identified by the Compliance team. In particular, promoters failing to ensure that an independent observer supervised prize draws, failing to produce an independently audited statement to verify that instant win tickets or numbers were awarded fairly and randomly or failing to ensure that when competitions were open to subjective interpretation, a judge was appointed who was independent of the promoter and its intermediaries.

5 CONCLUSIONS

The 94.5% compliance rate is encouraging and compares favourably with the compliance rate for other media. An ASA Survey of internet banner and pop-up advertisements in 2002 revealed a compliance rate of 99%, a Survey of outdoor advertising, also in 2002, revealed a compliance rate of 99%, and a Survey of direct mailings in 2001 found a compliance rate of 91%.

The Compliance team is concerned, however, at the number of promoters who were not able to demonstrate that prize draws were conducted, or instant win prizes distributed, under the supervision of an independent observer.

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

Promotions must be conducted under proper supervision and adequate resources must be made available to administer them. If promotions are administered poorly, consumers will distrust them and the integrity of the sales promotion business will suffer.

The ASA will continue to monitor the compliance of on-pack sales promotions on an ongoing basis and will work with the industry to improve the standards of administration.

6.1 Manor Bakeries Ltd

The complainant objected to a prize draw featured on the packaging of a cake; the outside of the packaging stated "...WIN a Luxury Break in London... You and a guest could be whisked off to London, enjoy two nights in a luxury hotel and visit the Channel 5 Studio to see the recording of Open House with Gloria Hunniford. Closing date: 22/11/02, see inside box for details...". The inside of the packaging stated "...For your chance to win a luxury Break in London... Simply fill in your details on the coupon below..." and provided full terms and conditions. The complainant objected that the promotion was misleading because it did not state how to participate on the outside of the packaging.

Relevant clauses: 27.1; 27.2; 32.1; 37.1 (Edition 10)

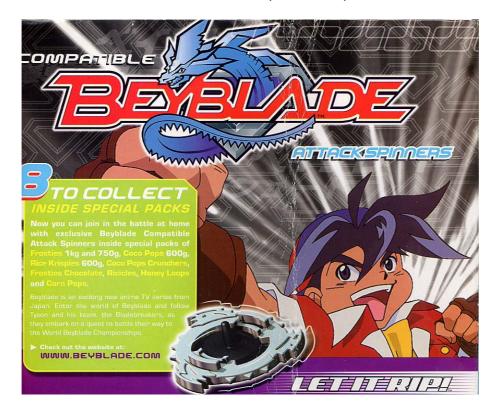


Outcome: the promoters explained that there was a "no purchase necessary" route for entry into the prize draw, but acknowledged that that was not made clear prior to purchase. They undertook to take greater care with future promotions.

6.2 Kellogg Company of GB Ltd

The complainant objected to a promotion that appeared on the back of 450g packs of Rice Krispies and 375g packs of Coco Pops. The back of both packs was headlined "Compatible BEYBLADE TM Attack Spinners". The Rice Krispies pack stated "8 TO COLLECT INSIDE SPECIAL PACKS. Now you can join in a battle at home with exclusive Beyblade Compatible Attack Spinners inside special packs of Frosties 1kg and 750g, Coco Pops 600g, Rice Krispies 600g, Coco Pops Crunchers... ". The Coco Pops pack stated "8 TO COLLECT ALL READY TO PLAY...". The complainants objected that the packaging misleadingly implied that the 'Attack Spinners' were inside the packs they had bought.

Relevant clauses: 27.2; 29.1; 32.1; 37.1 (Edition 10)



Outcome: the promoters argued that they had clearly distinguished which packs contained a Beyblade toy. The Authority considered that, although cereal packets that contained Beybledes merchandise were marked, the promoters should ensure that other packets did not imply that they contained Beybledes merchandise.

They undertook to consult the Committee of Advertising Practice Copy Advice team before preparing similar promotions.

7 PRE-PUBLICATION ADVICE

Seeking advice from the CAP Copy Advice team is the best way to ensure that a sales promotion does not break the Code and promoters are urged to use this service. The team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. Contact the team on 020 7580 4100 (telephone), 020 7580 4072 (fax) or on copyadvice@cap.org.uk. The team responds to almost 90% of written enquiries within 24 hours.

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

8 APPENDIX

8.1 <u>CAP Code clauses referred to in the Survey</u>

Introduction

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

Children

- 29.1 Special care should be taken when promotions are addressed to children (people under 16) or when products intended for adults may fall into the hands of children.
- 29.2 Alcoholic drinks should not feature in promotions directed at people under 18.

Availability

- 30.1 Promoters should be able to demonstrate that they have made a reasonable estimate of likely response and that they were capable of meeting that response.
- 30.4 If promoters are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they should offer refunds or substitute products in accordance with clause 42.5a.

Administration

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

Prize promotions and the law

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

Significant conditions for promotions

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

a How to participate

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

b Start date

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

c Closing date

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

d **Proof of purchase**

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

e **Prizes**

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

f Restrictions

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

g Availability of promotional packs

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

h **Promoter's name and address**

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

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

Other rules for prize promotions

- 35.7 Promoters of prize draws should ensure that prizes are awarded in accordance with the laws of chance and under the supervision of an independent observer.
- 35.8 Participants in instant win promotions should get their winnings at once or should know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers. Instant win tickets, tokens or numbers should be awarded on a fair and random basis and verification should take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.
- 35.9 Prize promotions should specify before or at the time of entry:
 - a any restriction on the number of entries
 - b whether or not a cash alternative can be substituted for any prize
 - c when prizewinners will receive their prizes if later than six weeks after the closing date
 - d how and when winners will be notified of results
 - e how and when winners and results will be announced. Promoters should either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners should not be compromised by the publication of excessively detailed personal information
 - in a competition, i.e. a game of skill or judgement, the criteria for judging entries (e.g. the most apt and original tiebreaker). If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request

- g if relevant, who owns any copyright in the entries
- h if applicable, how entries will be returned by promoters
- i any intention to use winners in post-event publicity

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

These are the clauses referred to in the Survey. Promoters should refer to the CAP Code to view the full Sales Promotion Rules.

8.2 CAP Help Note on Promotions with Prizes

In April 2000, CAP produced a Help Note on Promotions with Prizes that provided detailed guidance on complying with the Sales Promotion rules in the CAP Code. The Help Note is produced in full overleaf.



HELP NOTE ON PROMOTIONS WITH PRIZES

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

1. General Code rules

1.1 The Code states:

"All marketing communications should be prepared with a sense of responsibility to consumers and to society" (clause 2.2);

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

"Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it" (clause 4.1);

"Marketers should not exploit the credulity, lack of knowledge or inexperience of consumers" (clause 6.1); and

"No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise" (clause 7.1);

1.2 In addition, clauses 34.1, 35.1-35.8 and 35.9 a-i explain in detail many standard rules that are not mentioned in this Help Note but that apply to promotions with prizes; and

1.3 The following guidance supplements the Sales Promotion rules. It should not be viewed in isolation to the British Code of Advertising, Sales Promotion and Direct Marketing.

2. Legality

The Code states:

"Promotions with prizes including competitions, prize draws and instant win offers are subject to legal restrictions" and "Promoters usually seek to avoid running illegal lotteries by running skill-based prize competitions (often using tiebreakers to identify the winners) or by offering free entry if the chance-based prize promotion might encourage purchase. Promoters should take legal advice before embarking on such promotions" (clauses 33.1 and 33.2).

- 2.1 The Lotteries and Amusements Act 1976 is the main statute that governs lotteries and competitions. The Act does not define a "lottery" but in *Readers Digest Association v Williams* in 1976 it was stated that a lottery consisted of the distribution of prizes by chance, where people taking part in the lottery, or a substantial number of them, had made a payment or consideration in return for obtaining their chance of a prize (note: payment or consideration may take the form of a direct payment, a requirement to purchase a product or service or a requirement to make a premium rate phone call). A lottery thus contains the following two elements: distribution of prizes by chance; and payment for that chance in the knowledge of getting that chance. Competitions are distinct from lotteries in that they are based on skill (note: a sufficient degree of skill should be displayed and where a promotion is divided into stages, a sufficient degree of skill should be present at each stage);
- 2.2 Unless a lottery is one of the five "legal" lotteries (e.g. private lotteries or the National Lottery) allowed by the Act, it will be illegal; and
- 2.3 Promoters usually avoid running illegal lotteries by offering free entry, or a free route of entry, to their chance-based promotions (note: where the chance to enter is free to some participants but is also available for payment, the legality of a prize promotion is likely to depend on whether it can be shown both that a reasonable chance of free entry exists and that a substantial number of entrants will enter using this route) or by ensuring that their promotions are skill-based (see 2.1 above). Promoters should contact a lawyer for advice under the Lotteries and Amusements Act.

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

3.1 For the purposes of this Help Note, a "prize draw" is a scheme in which prizes are allocated by chance but no charge is imposed, or purchase of goods or services required, in order to participate (see 2.3 above and section 10 below). The term includes "instant win" promotions where consumers get any winnings at once or know immediately what they have won and how to claim it without delay, unreasonable cost or administrative barriers. In traditional prize

draws the winner is chosen at random from all valid entries. In "pre-selected winner" promotions, the promoter chooses the winner at random from all possible winners (usually before direct mailings, each bearing an individual number, are distributed) and only later determines whether that entry has been returned by the consumer. If it has, that entry is the winner. If it has not, that "winner" is void (a new winner is often then picked from all valid entries as in a traditional prize draw);

- 3.2 For the purposes of this Help Note, a "prize competition" is a scheme in which prizes are allocated on the basis of skill and for which a charge is often imposed or the purchase of goods or services required. Promoters usually require consumers to complete a tie-breaker so that the winner can be selected on the basis of skill; often they initially filter out entries by requiring consumers to answer one or more question first; and
- 3.3 For the purposes of this Help Note, a "premium promotion" is a scheme in which participants qualify for the same gift, benefit or item irrespective of chance. Although not a promotion with a prize, consumers are often offered a free gift at the same time as entry to a prize draw.

4. General principles

- 4.1 Promoters should communicate in a manner that is clear and readily understandable by the intended audience;
- 4.2 Promoters should state accurately, unambiguously and completely all rules, entry instructions and other material terms of the promotion. In particular, the structure (or "mechanic") of the promotion should be transparent from the promotional material;
- 4.3 Promoters should not state or imply that a consumer has won a prize when that is not the case, nor should they overstate a consumer's chance of winning a prize;
- 4.4 Promoters should not apply unreasonable conditions to promotions with prizes;
- 4.5 Promoters should state clearly in any promotion that invites entry or contains an entry opportunity any conditions that must be satisfied before consumers can win prizes;
- 4.6 Promoters should not misrepresent the value, nature or availability of prizes;
- 4.7 Promoters should state clearly all requirements for entry including the dates by which entries must be mailed or received to be eligible to enter;
- 4.8 Promoters of prize draws should state clearly how consumers can enter without making a purchase (or other contribution) before such a purchase is made; and

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

5. Implying consumers have won

The Code states:

"Promoters should not claim that consumers have won a prize if they have not..." (clause 35.1); and

"Promoters should not overstate consumers' chances of winning prizes. If promoters include consumers who have not won prizes in lists of those who have won prizes, they should distinguish clearly between the two" (clause 35.2).

- 5.1 Promoters should ensure that claims, particularly those that feature prominently in promotions with prizes, are either worded to reflect in full the point about the promotion that the promoter wishes to make or are suitably qualified so that consumers are not misled. Qualifying claims can expand on primary claims, or qualify them in other ways, but should not contradict the impression a consumer might get from reading in isolation the primary claim (see Help Note on Claims that Require Qualification);
- 5.1.1 For example, promoters often state in direct mailings "Mr X will definitely win the prize if he has and returns the winning entry. The qualifying part of that sentence (i.e. "...if he has and returns the winning entry") should be of similar prominence to the promise part of the sentence (i.e. "Mr X will definitely win the prize...");
- 5.2 If promoters include a consumer who has not won a prize in a list of those who have won prizes, they should distinguish clearly between those who have won and those who merely have a chance to win;
- 5.3 Promoters should not encourage consumers to transfer a seal from one place to another, or match one number with another, or 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 that is not the case; and
- 5.4 Promoters should not describe prizes or prospective prize award ceremonies (or similar) in such a way as to imply that consumers have already won when that is not the case, or in such a way as to overstate consumers' chances of winning.

6. Distinguishing between prizes and gifts

The Code states:

"...The distinction between prizes and gifts should always be clear. Gifts offered to all or most consumers in a promotion should not be described as prizes. If promoters

offer gifts to all or most consumers in addition to giving prizes to those who win, particular care is needed to avoid confusing the two. In such cases, it should be clear that consumers "qualify" for the gifts but have merely an opportunity to win the prizes. If promoters include a gift that consumers have qualified for in a list of other prizes, they should distinguish clearly between the two" (clause 35.1).

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

7. Implying consumers are luckier than they are

The Code states:

"Promoters should not claim that consumers are luckier than they are. They should not use terms such as "finalist" or "final stage" in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of promotions if they have not" (clause 35.3).

- 7.1 Promoters should not state or imply that any one entry or category of entries is more likely to win than any other when that is not the case;
- 7.2 Promoters should not misuse terms such as "finalist" or "next stage" to imply that consumers have progressed, by chance or skill, to an advanced stage of the promotion when that is not the case; in particular, they should not use those terms when consumers have merely been offered entry to the promotion;
- 7.3 Similarly, promoters should not state or imply that consumers are lucky if that might lead consumers to think, incorrectly, that they have progressed, by chance or skill, to an advanced stage of the promotion; and
- 7.3 Promoters who use terms such as "last chance to enter" either to inform consumers that the promotion is coming to an end or to indicate that the promotional material is among the final opportunities consumers have to enter should ensure that their meaning is clear and not exaggerated; promoters who inform consumers of such information with terms like "final round" should take particular care not to imply that consumers have reached an advanced stage in the promotion when that is not the case.

8. Prizes and how to award them

- 8.1 Promoters should state the minimum number and nature of prizes. Promoters offering substantial numbers of prizes need only give an indication of their number (e.g. "...plus thousands of free meals available to be won");
- 8.2 Promoters can justify withholding prizes only if consumers have not met clear criteria set out in the promotional rules or if promoters have told consumers at the outset that insufficient entries or entries of insufficient quality will lead to the withholding of prizes;
- 8.3 Promoters should take care when prizes are listed together to ensure that they do not imply that lesser prizes are of equal or greater value to more valuable prizes;
- 8.4 Promoters should state clearly the terms and conditions relating to any prize if it is to be received in instalments or if it may be shared among multiple winners:
- 8.5 Promoters of prize draws should ensure that prizes are awarded in accordance with the laws of chance and under the supervision of an independent observer. Instant win tickets, tokens or numbers should be allocated on a fair and random basis and verification should take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner; and
- 8.6 Promoters of competitions where the selection of winning entries is open to subjective interpretation should appoint an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries. Those appointed to act as judges should be competent to judge the subject matter of the competition; their full names should be made available on request.

9. Closing dates

- 9.1 Promoters should state clearly and prominently any entry deadlines and, where it is not obvious from the promotional material, the consequences of failing to meet such deadlines;
- 9.2 Promoters should not change the closing date for entry to promotions with prizes unless circumstances outside their reasonable control make it unavoidable. If they are changed, promoters should take all reasonable steps to ensure that consumers who participated within the original terms are not disadvantaged; and
- 9.3 Promoters should not state or imply that consumers must respond by a specified date or within a specified time if they need not.

10. Free entry

- 10.1 Promoters of prize draws should, before consumers purchase, give clear instructions on how they can enter without purchasing (see 2.3 above);
- 10.2 The free entry route should be genuine and realistic; promoters should not discriminate against those who wish to take a "free entry" route into a prize draw and conditions should not be applied to "free entry" routes that cannot readily be met by consumers under normal circumstances;
- 10.3 Promoters who offer a separate entry device for those who wish to enter without purchasing should ensure that it is of such a size and in such a form as to be readily found, understood and used by consumers; and
- 10.4 Promoters who offer the same entry device to those who wish to purchase and enter and those who merely wish to enter should state that no purchase is necessary to enter the prize draw.

11. Other points

- 11.1 Promoters should not state or imply on envelopes that mailings are from an official source when that is not the case. Similarly, promoters should not state or imply on envelopes that mailings contain private information when that is not the case: claims such as "private and confidential" are likely to mislead as to the importance and status of the content of the mailings unless the content, which might principally consist of promotional material, also contains information that the recipient is reasonably likely to consider private (e.g. bank account details). More ambiguous claims on envelopes such as "official notice" could mislead if they are not immediately and prominently qualified to relate to the promotion on offer: for example, "official notice" on its own could be a problem but "official notice...enter our holiday draw" should be acceptable. Promoters should take particular care when making claims that are visible through the windows of envelopes not to initially lead recipients into thinking something that is not true. (See Help Note on Claims on Envelopes);
- 11.2 Promoters should not misrepresent the areas in which promotions with prizes are being promoted; they should not imply, for example, that the winner will come from the UK when that is not necessarily the case;
- 11.3 Promoters should ensure that fake cheques, or similar, used to give consumers an indication of what they could win are not presented as real. They could, for example, print "sample" diagonally across such cheques;
- 11.4 Consumers should always be able to retain entry instructions and rules; and
- 11.5 Promoters should state their full name and business address in a form that can be retained by consumers, unless this is obvious from the context. Promotions by newspapers and magazines in their publications need not state the name and address if those can easily be found elsewhere in the publications.

Advice on specific promotions is available from the Copy Advice team by telephone on 020 7580 4100, by fax on 020 7580 4072 or by email on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to AdviceOnline, a database of advice with links through to relevant Code rules and ASA adjudications.

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