

Ensuring your promotion is a win-win

Key points for promoters to consider when planning a promotion

A prize promotion can be a great way for a promoter to engage with its customers - and potentially find new ones. But getting it right isn't always easy. And when things go wrong - as they sometimes do despite the best of intentions - a promoter can find itself facing negative publicity and even an adverse ruling from the Advertising Standards Authority. A little advance planning can go a long way to avoiding some of the common pitfalls and ensuring a promotion is a win-win for both the promoter and its participants. So check out our practical guide below, which offers some vital tips and highlights the key considerations to bear in mind when embarking on a new promotion.

Keep your eye on the prize

Be clear about what you are offering: What prizes (and how many) are up for grabs? Often this is straightforward, but not always, especially if the prize is something more complicated, such as a holiday. If the prize only includes flights and accommodation, certain mandatory costs, such as flight taxes, should be included, but what about transfers, meals and other discretionary spending? Remember that it is just as important to be clear about what's not included, especially if leaving out that information would be misleading. And of course, it is essential to award those prizes. Sometimes things go wrong, but even if the original prize becomes unavailable for genuine reasons, promoters must still award some form of prize of at least the same value.



Make sure your prize draw is lawful - don't leave it to chance!

A prize draw is a promotion where the winner is selected at random from all eligible entries, so that everyone has an equal chance of winning. Prize draws should be free to enter. If entrants have to pay to enter, to find out if they have won, or to claim their prize, then it is likely to be an illegal lottery. It can be an offence to operate an illegal lottery. In Great Britain (i.e. England, Scotland and Wales), promoters can link entry to the purchase of a product or service. For example, buy a can of *Silkin Cola* at its usual price and be entered into a prize draw. However, the product or service must be sold at its normal price - if the price of the product or service is higher than usual, that is the same as requiring payment to enter, and it can render the whole promotion unlawful. The position in Northern Ireland is slightly different, so be careful if your promotion is open to all UK residents.

Know your competition

A prize competition involves the exercise of skill, knowledge or judgement on the part of entrants. The competition might involve submitting a story, a photograph or a painting, or simply answering multiple-choice questions or solving a puzzle. In Great Britain, it is lawful to charge people to take part in competitions (e.g. by having an entry fee) as long as the competition involves a sufficient degree of skill, judgement or knowledge. That means it must be difficult enough to prevent a significant proportion of people from taking part or prevent a significant proportion of people who do take part from winning a prize. If entrants pay to take part but the level of skill, knowledge or judgement required wasn't sufficient it could be an illegal lottery.



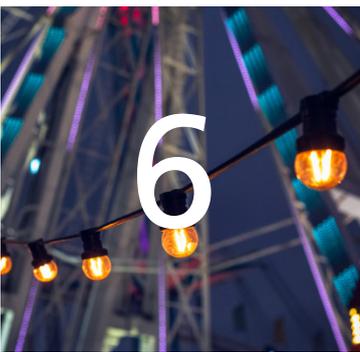
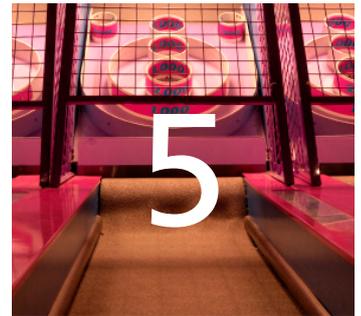


We have a winner!

Whether you're running a free prize draw or a prize competition, you must be transparent when it comes to the selection of winners. If a prize competition involves subjective assessment, for example a photo or painting contest, the winner must be selected by an independent person or a panel that includes at least one independent person. That independent person must be competent to judge that kind of contest - ideally having relevant qualifications or experience. For a free prize draw, unless the winner is selected by a computer process that produces verifiably random results, the winner must be selected by (or under the supervision of) an independent person. The independent person must be genuinely independent from the promoter, the promotion and the prize.

Know the rules of the game

Prize promotions are subject to consumer protection laws as well as the rules set out in the CAP Code, which governs all forms of non-broadcast advertising. You are expected to conduct your promotions equitably, promptly and efficiently, and to deal fairly and honourably with participants. This means, amongst other things, being clear about the rules of the promotion and any judging criteria, leaving plenty of time for each stage, awarding the advertised prizes and not changing the rules mid-promotion. Above all, avoid doing (or failing to do) anything that is likely to mislead or cause unnecessary disappointment. If in doubt, put yourself in the entrant's position!



And know your limitations

Include the most significant limitations in all marketing materials which refer to the promotion. This might include, for example, the requirement for entrants to be 18+ and GB resident, as well as the closing date, maximum number of entries allowed per person, any very significant limitations applicable to the prize, and so on. The identity of the promoter must be clear, and remember to include a reference to the fact that T&Cs apply, and where to find them (usually this means including a URL). Whilst the rules allow some latitude where space is genuinely limited, the ASA is very strict on this issue and so whilst it may be tempting to leave out this information where space is tight (such as in a social media post), this can be a high-risk strategy and it is best to include as much key information as possible.

Use your platform

Promotions which are operated via a social media platform must comply with the rules of the relevant platform, so ensure you check the latest platform rules and what they say about operating promotions. Some of the main social media platforms are reasonably relaxed about promotions being run on their platforms, as long as it is clear from the T&Cs that the platform doesn't endorse the promotion and that they have no liability in connection with the promotion, and the promotion doesn't encourage inaccurate tagging (i.e. tagging themselves or others in images/posts where they do not appear). The platforms also expect promoters to take legal advice to ensure the promotion is compliant with applicable laws and rules.



Child's play?

Special care is required in relation to promotions which are targeted at children or allow children to enter. Ensure that the promotion, promoter and prize are not associated with an age restricted product – this includes HFSS (High Fat, Salt or Sugar) products and brands. Extra care must be taken not to exaggerate the value of prizes or the chances of winning them. If prizes might cause conflicts between the children and their parents, the promotion must make clear that adult permission is required. Terms and conditions and all marketing claims/materials relating to the promotion must be easily understood by all entrants (taking into account their age) and must comply with the CAP Code rules, including the sections of the CAP Code which relate specifically to children. Encouraging children to send any information about themselves or others, or to submit user generated content, is risky business and you should certainly seek legal advice.

What a data be alive

One of the benefits of running promotions is that it provides an opportunity for promoters to gather data which it might be possible to use for marketing purposes. Promoters must ensure that a suitable privacy notice is brought to entrants' attention before they submit their entry. Obtaining explicit consent from entrants at the point of entry will often, but not always, be the best way forward. The collection and processing of data must comply with data protection laws, and extra care is needed when handling sensitive personal data and/or data relating to children. Encouraging entrants to send personal data relating to other people is usually risky. Inevitably, various parties will be involved in the collection and processing of the data – such as the promoter, third-party administrators, prize providers, and perhaps others involved in related marketing activity. Appropriate written agreements will need to be in place between those parties. Data is a complex area, and we recommend taking legal advice.



Home Nations

There are some quirks which promoters should be aware of when operating promotions in the UK. In Northern Ireland, the gambling laws are different to those in Great Britain, and it can breach those laws if a promotion includes a requirement for entrants to pay or to purchase a product in order to enter. A 'No Purchase Necessary' option can sometimes help to manage this risk, if properly executed. In Wales, Scotland and Northern Ireland, the rules around alcohol-linked promotions are a little stricter than in England, so further investigation is required when operating a UK-wide promotion which is linked to alcohol. Promotions which are open to people from countries outside the UK are very likely to be subject to the laws of those other countries, which can include requirements around translation, pre-registration and tax – so take advice if you plan to operate an international promotion.

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