

12. Code of Sales Promotion Practice

Scope and Application

12.1 The Code of Sales Promotion Practice regulates the nature and administration of those marketing techniques which involve the provision of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers. The Code covers, amongst others, such forms of promotions as:

premium offers,
reduced price and free offers,
the distribution of vouchers, coupons and samples,
personality promotions,
charity-linked promotions,
prize promotions.

12.2 The Code is designed primarily to protect the public but it also applies to trade promotions and incentive schemes and to the promotional elements of sponsorship.

12.3 The Code should be read, where appropriate, in conjunction with the Code of Advertising Standards.

12.4 For the purposes of the Code:

- a. a *product* can encompass goods, services, facilities, opportunities, fund raising, prizes and gifts;
- b. a *promoter* is any person or body by whom a sales promotion is initiated or commissioned;
- c. an *intermediary* is any person or body, other than the promoter, responsible for the implementation of any form of sales promotional activity;
- d. a *consumer* is any person who is likely to see a particular advertisement or promotion;
- e. a *claim* can be direct or implied, written, spoken or visual;
- f. references to promoters should be interpreted as including intermediaries and agencies unless the context indicates otherwise;
- g. where for the sake of clarity and brevity the singular form of a word is used this should be construed as including legal persons and groups as appropriate;
- h. every word importing the masculine gender should be construed as if it also imported the feminine gender unless the contrary intention appears. Every word importing the feminine gender should be construed as if it also imported the masculine gender unless the contrary intention appears.

12.5 The Code is applied in accordance with the following criteria:

- a. An invitation from the Authority to comment on a complaint does not mean that the Authority accepts the complainant's view. Each case is considered on its merits.

- b. The Code does not deal with contractual relationships between promoters and consumers. It does not presume to judge whether a product represents value for money nor does it seek to regulate terms of business.
- c. ASAI does not act as an arbitrator between conflicting ideologies.
- d. No legal advice can be given or should be presumed in communications from the Authority (Board, Complaints Committee or Secretariat).
- e. The judgement of the Advertising Standards Authority for Ireland on any matter of interpretation is final.

Principles

12.6 All sales promotions should be legal, decent, honest and truthful.

12.7 All sales promotions should be prepared with a sense of responsibility to consumers and to society; they should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

12.8 All sales promotions should respect the principles of fair competition generally accepted in business.

12.9 A promoter or intermediary should not bring sales promotion into disrepute.

12.10 Primary responsibility for observing the Code rests with promoters. Others involved in the design and conduct of promotions such as intermediaries and agents also accept an obligation to abide by the Code.

12.11 Failure to respond or unreasonable delay in responding to ASAI's enquiries may be considered a breach of the Code.

12.12 The Authority will observe requests to treat any confidential material supplied in strict confidence unless the Courts or an official agency acting within its statutory powers compel its disclosure.

12.13 The Code is applied in the spirit as well as in the letter.

Public Interest

12.14 Sales promotions should not be designed or conducted in a way that conflicts with the public interest. They should contain nothing that condones or is likely to provoke violent or anti-social behaviour, nuisance, personal injury or damage to property.

Substantiation

12.15 Promoters should be able to provide documentary evidence to demonstrate that they have complied with the Code as regards any detailed claims, the way in which the sales promotion is administered and the overall impression created by the promotion.

Legality

12.16 Promoters have primary responsibility for ensuring that sales promotions are legal. A sales promotion should not contain anything that breaks the law or incites anyone to break it, nor omit anything that the law requires.

Honesty

12.17 Promoters should not abuse the trust of consumers or exploit their credulity, inexperience or lack of knowledge.

Truthfulness

12.18 A sales promotion should not mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Protection of Consumers

12.19 Promoters should have proper regard for normal safety precautions. Promotional products and samples should be distributed in such a way as to avoid the risk of harm to consumers. Special care should be taken when sales promotions are addressed to children or where products intended for adults may fall into the hands of children. Literature accompanying promotional items should contain any necessary safety warnings.

12.20 Sales promotions should be designed and conducted in a way that respects the right of consumers to a reasonable degree of privacy and freedom from annoyance.

12.21 Consumers should be told before entry if participants may be required to become involved in any of the promoters' publicity or advertising, whether it is connected with the sales promotion or not. Prizewinners' interests should not be compromised by the publication of excessively detailed information.

Suitability

12.22 Promoters should not offer promotional products which are of a nature likely to cause offence or products which, in the context of the promotion, may reasonably be considered to be socially undesirable.

Availability

12.23 Promoters should be able to demonstrate that they have made a reasonable estimate of the likely response and that they are capable of meeting that response. This applies in all cases except prize promotions, where the number of prizes to be awarded should be made clear to participants.

12.24 Phrases such as 'subject to availability' do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.

12.25 If promoters are unable to meet demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, products of a similar or greater quality and value or a cash payment should normally be substituted.

Quality

12.26 Promoters should ensure that promotional products meet satisfactory standards of safety, durability and performance in use. Where appropriate, such matters as guarantees and aftersales service should be clearly explained.

Sales Promotions and Children

All supporting advertising material used in the presentation of sales promotions must conform with the Code of Advertising Standards which contain specific rules relating to advertising directed at children at [Section 5](#).

12.27 Sales promotions addressed to or likely to attract children:

- a. should be designed and conducted in a way that will not cause physical, mental or moral harm to children;
- b. should not offer promotional products that are unsuitable for distribution to children;
- c. should not encourage children to enter into unsafe situations or strange places or talk to strangers e.g. for the purpose of making collections or accumulating labels, wrappers or coupons;
- d. should make it clear that parental permission is required if prizes and incentives might cause conflict between children and their parents; examples include animals, bicycles, outings, concerts and holidays.

12.28 A sales promotion should not exploit the loyalty, credulity, vulnerability or lack of experience of children:

- a. they should not be made to feel inferior or unpopular for not buying a particular product;
- b. they should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy the product;
- c. they should not be asked to disclose personal information about themselves or their families without having first obtained permission from their parents or guardians;
- d. promotions should not undermine the authority, responsibility or judgement of parents and guardians. Promotions should not include any appeal to children to persuade their parents or other adults to buy advertised products for them;
- e. a product that is part of a series should be clearly indicated as such and should include the method of acquiring the series.

Presentation

12.29 The presentation of sales promotions and the associated publicity should not mislead consumers.

12.30 All supporting advertising material should conform both to the law and to the Code of Advertising Standards. In particular, descriptions of promotional products should not overstate their quality, availability, uses or value.

12.31 The fact that promotional products may be acquired free of charge does not dispense with the need for a full and correct description.

Terms of the Promotion

12.32 The terms in which a promotion is presented should be clear, complete and easy for the consumer to understand. The following points should be clearly explained:

- a. how to participate, including any conditions and costs;
- b. the promoters' full name and business address in a form that can be retained by consumers;
- c. the closing date prominently displayed; where the final date for purchase of the promoted product differs from the closing date for the submission of claims or entries, this should be made clear to participants;
- d. any proof-of-purchase requirements; this information should be emphasised for example by using bold type, separating it from other text or using a different colour. A requirement to purchase more than one unit of a product to participate in a promotion ideally should be stated on the front of any label or material carrying details of the promotion;
- e. any geographical or personal restrictions;
- f. any necessary permissions (e.g. those of parents or guardians);
- g. any limit on the number of applications permitted;
- h. any limit on the number of promotional products or prizes that an individual consumer or household may claim or win;
- i. any other factor likely to influence consumers' decisions or understanding about the promotion.

12.33 Any terms or conditions, the effect of which is either:

- to exclude some consumers from the opportunity to participate
- or
- to impose requirements that are likely to affect a consumer's decision whether or not to participate

should be clearly and prominently stated so as to be clear to the consumer before any commitment is made.

Administration

12.34 Sales promotions should be conducted under proper supervision and with adequate resources. Promoters and intermediaries should not give consumers any justifiable grounds for complaint.

12.35 Promoters should allow ample time for each phase of the promotion: notifying the trade, distributing the goods, issuing rules where appropriate, collecting the wrappers and the like, judging and announcing the results.

12.36 Promoters should fulfil applications within 28 days unless:

- a. participants have been told in advance that it is impractical to do so;
- b. participants are informed promptly of unforeseen delays and are offered another delivery date or an opportunity to recover any money paid for the offer.

12.37 When damaged or faulty goods are received by a consumer, promoters should ensure that they are either replaced without delay or that a refund is sent immediately. The promoters are entitled to seek the return of the faulty goods and, if possible, the original packaging, at their expense. The full cost of replacing damaged or faulty goods should fall on promoters. If any applicant does not receive goods, promoters should normally replace them free of charge.

Free Offers

12.38 An offer should be described as free only if consumers pay no more than

- a. the current public rate of postage;
- b. the actual cost of freight or delivery;
- c. the cost, including incidental expenses, of any travel involved if consumers collect the offer.

In all cases consumers' liability for such costs should be made clear and there should be no additional charges for packaging or handling.

12.39 Promoters should not attempt to recover their costs by reducing the quality or composition, by inflating incidental expenses or by increasing the price of any product that must be purchased as a pre-condition of obtaining a free item.

12.40 A trial should not be described as free if the consumer is expected to pay the cost of returning any goods, unless this requirement is made clear to the consumer when the offer is made.

12.41 Where an offer appears on a product, and when benefiting from that offer requires several purchases of the product, the need to make additional purchases should be clearly indicated.

12.42 Where an offer covers two or more items, of which only one is free, it should be made clear to the consumer what is offered free and what they must pay for.

12.43 Where unsolicited samples or gifts are distributed through a promotion, it should be made clear that the consumer is under no obligation to buy or return the items.

Promotions with Prizes

12.44 Promotions involving prizes are subject to legal requirements and promoters are strongly advised to seek expert legal advice.

12.45 Entry conditions should be clearly worded and should set out the following details:

- a. the closing date;
- b. any age, eligibility or geographical restrictions;
- c. any restrictions on the number of entries or prizes;
- d. any requirements for proof-of-purchase;
- e. any permissions required (e.g. from parent or employer);
- f. the criteria for judging entries;
- g. a full and accurate description of the prizes;
- h. any limitations imposed on acceptance of the prizes and any duties or obligations on the part of the winners (e.g. in regard to post-event publicity);
- i. whether a cash alternative can be substituted for any prize;
- j. how and when winners will be notified of results;
- k. how and when results will be published (see 12.49);
- l. where appropriate, who owns the copyright of the entries;
- m. whether and how entries will be returned.

12.46 Complex rules should be avoided and promoters should not need to supplement conditions of entry with additional rules. If further rules cannot be avoided participants should be informed how to obtain them; the rules should contain nothing that would have influenced a consumer against making a purchase or participating. Participants should always be able to retain entry instructions and rules.

12.47 The closing date should be clearly stated in each advertisement, on each entry form and on the outer surface of any relevant pack, wrapper or label. This date should not be changed unless circumstances outside the reasonable control of the promoters make it unavoidable.

12.48 A poor response or an inferior quality of entries is not an acceptable basis for extending the duration of a promotion or withholding prizes unless the promoters have explicitly reserved their right to do so at the outset.

12.49 Promoters should either publish or make available on request details of the name and county of major prizewinners. Promoters should bear in mind the risk of theft or harassment that may arise if the details given are sufficient to allow the address of a winner of a prize of substantial value to be pinpointed.

12.50 Unless otherwise stated in advance, prizewinners should receive their prizes no more than six weeks after the promotion has ended.

12.51 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 identity of judges should be made available on request.

12.52 Where a prize promotion involves any form of draw, promoters should ensure that tokens, tickets or numbers are allocated on a fair and random basis. An independent observer should supervise the draw to ensure that individual entries enjoy equal chances.

12.53 When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.

12.54 The distinction between a prize and a gift should always be clear to consumers. Gifts offered to all or most participants in a promotion should not be described as prizes. If promoters offer a gift to all entrants in addition to giving a prize to those who win, particular care is needed to avoid confusing the two.

12.55 Promoters should not exaggerate the likelihood of consumers winning a prize.

Advertisement Promotions

12.56 Advertisement promotions should be designed and presented in such a way that they can easily be distinguished from editorial material.

12.57 Features, announcements or promotions that are published in exchange for a payment or other reciprocal arrangement where their content is controlled by the promoter should comply with the Code.

12.58 Publishers announcing reader promotions on the front page or cover should ensure that consumers know whether they will be expected to buy subsequent editions of the publication. Major qualifications that may significantly influence consumers in their decision to purchase the publication should appear on the front page or cover.

Charity-linked Promotions

12.59 Promotions claiming that participation will benefit a charity or good cause should:

- a. name the charity or good cause that will benefit, and be able to demonstrate that those benefiting consent to the advertising or promotion;
- b. define the nature and objectives of the charity or cause unless that information is already widely available;
- c. specify the extent and the nature of the advantage to be gained by the charity or cause;

- d. state if the promoters have imposed any limitations on the contribution they will make;
- e. not limit consumers' contributions; any extra money collected should be given to the named charity or cause on the same basis as contributions below that level;
- f. not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product;
- g. make available on request a current or final total of contributions made;
- h. take particular care with charity-linked promotions which may involve children and young people (see paragraphs 12.27 and 12.28).

Promotions and the Trade

12.60 Promotions and incentive schemes should be designed and implemented to take account of the interests of everyone involved and should not conflict with the duty of employees to their employer or their obligation to give honest advice to consumers.

12.61 Promoters should secure the prior agreement of employers or of the manager responsible if they intend to ask for assistance from, or offer incentives to, any other company's employees. Promoters should observe any procedures established by companies for their employees, including any rules for participating in promotions. In the case of a trade incentive scheme that has been advertised rather than individually targeted, employees should be advised to obtain their employer's permission before participating.

12.62 It should be made clear to those benefiting from an incentive scheme that they may be liable for tax.

Data Protection

12.63 Attention is drawn to the requirements of the Data Protection Act, 1988, in regard to the collection, processing, keeping, use and disclosure of personal data.