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12 December 2014

CAP Sales Promotion Consultation  
Regulatory Policy Team  
Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London WC1V 6QT  
By email to [salespromotions@cap.org.uk](mailto:salespromotions@cap.org.uk).

Dear Sirs

Response to CAP Sales Promotion Rules Consultation

The National Trading Standards Board (the Board) is a group of senior and experienced local government heads of trading standards, representing all trading standards services across England and Wales. The Board has been set up by the Government as part of changes to the consumer protection landscape and an enhanced role for trading standards. It provides leadership influence, support and resources to help combat consumer and business detriment locally, regionally and nationally.

The Association of Chief Trading Standards Officers (ACTSO) is the single membership organisation representing senior Trading Standards Managers from councils across England and Wales. ACTSO is focussed on providing effective leadership at the national level while supporting members to lead their services both locally and regionally.

The Fair Trading Expert Panel (FTEP) comprises of representatives from each of the Trading Standards regional groups together with representatives from Scotland and Northern Ireland as well as from the Primary Authority Supermarkets Group and the TSI Lead Officers for Fair Trading. The FTEP has prepared this response on behalf of the National Trading Standards Board and Association of Chief Trading Standards Officers.

The Board and ACTSO are pleased to be given the opportunity to respond to the Advertising Standards Authority's consultation on CAP Sales Promotion Rules and are in general agreement with the ASA's rationale behind the changes proposed.

We would ask however, that any guidance on compliance is reviewed to take account of the Pricing Guidance that is to be written by the Trading Standards Institute early next year.

### **Question 1 Response**

In any code or guidance the information on which to make an informed decision is required to be as 'BOLD, PRECISE & COMPELLING', as the PROMOTION is to avoid a situation where the information provided to clarify the informed decision is ineffective due to e.g. size, location, timing etc.

We have concerns as to:

- how this will be worded as advertisers should not be allowed to use a catch all slogan such as "subject to availability" or "limited availability" to avoid their obligations under this rule;
- the examples of how to comply with the rule: these in themselves must not mislead e.g. "likely to run out quickly" when this is not demonstrable as being a likely response;
- the 'first 500' statements when numbers are extended as more stock becomes available because it sells well;
- how to comply statements will in turn be used as promotional tools, without consideration as to validity.

### **Questions 2 and 3 Response**

We suggest that at 8.12 the offer matches that referred to in the Package Travel Regulations for problems with holidays e.g. 'reasonable equivalent' is changed to 'equivalent or better'.

### **Question 4 Response**

We feel this is a welcome improvement. In particular, the fact that under the current rule significant conditions could be omitted as long as they were communicated before entry, whereas the proposed amendment will apply to "marketing communications".

### **Question 5 Response**

We agree with this proposed change, provided the issue is covered by the Distance Selling Rules.

The amendment would not lead to any potential for consumer detriment as cases will be judged on their individual facts.

### **Questions 6 and 7 Responses**

Agreed.

### **Question 8 Response**

Agreed. It seems unlikely that the changing of a closure date, which did not cause any consumer disadvantage would have led to any complaints, however we accept that the wording needs to be changed due to the need for UCPD harmonisation.

### **Questions 9 and 10 Responses**

Agreed.

### Question 11 Response

Agreed except we feel this rule could be better worded. We suggest that the amendment may be clearer if “they must” is inserted between “and” and “only exceptionally”.

Or, alternatively, rather than “and only exceptionally supplement conditions of entry with extra rules” we suggest “and must only supplement conditions of entry with extra rules in circumstances where this cannot be avoided”.

### Question 12 Response

Agreed.

### Questions 13 Response

We accept the reasoning as to why this rule should be amended however, instead of adding the vague statement “are likely to be required” we suggest the wording “In addition to Rule 8.17, where the omission of any of the specified items is likely to mislead the consumer, prize promotions must specify before or at the time of entry:.....”

### Questions 14 Response

Agreed.

### Questions 15 Response

Agreed. The Board and ACTSO welcomes the decision to review the sales promotion rules to reflect the UCPD and CPRs and associated case law and we are grateful for the opportunity to respond. We have broadly agreed with all of the proposals but where we have suggested a slight amendment we hope that this is useful to you.

If you wish to discuss any of these issues further, please contact [REDACTED] and we will be very happy to do so.

Yours faithfully



**Chairman**  
**National Trading Standards Board**



**Chairman**  
**Association of Chief Trading Standards Officers**

## **CAP Sales Promotion Rules Consultation**

### **Preliminary**

The BRC has been concerned for a long time that the CAP and BCAP codes, and decisions made by the ASA under the codes go beyond the requirements of the UCPD/CPRs which is a fully harmonised Directive.

Whilst the ASA is the self-regulator for the advertising industry, it does fulfil a number of functions that cross over into the world of public regulation, for example by acting as the delegated regulator for advertising on television and as an “established means” under the Consumer Protection from Unfair Trading Regulations.

This enhances the arguments that the codes need to be consistent with the text of the Consumer Protection from Unfair Trading Regulations/Unfair Commercial Practices Directive

This matter was raised when CAP consulted on the future of the code, when the CPRs were introduced and we have continued to press on this point in the recent consultation on prioritisation principles.

We would suggest that the review of the UCPD by The European Commission provides an appropriate moment to call for further reflection on the status of any self-regulatory option on the grounds that what is essentially a regulatory body is undermining the single market and indeed the fully harmonised nature of the Directive by imposing requirements that go beyond that Directive. In principle we believe that if the self-regulatory system is to continue, the Codes should say no more and no less than the Directive as transposed itself.

We also believe that the operation of the process should be a transparent in which both sides can see the evidence, argue their case and cross question each other. And there should be a truly independent and transparent appeals process.

Given the procedures required for TSI Code scheme recognition (and formerly OFT code scheme recognition) and the ADR Directive with its requirements for a totally independent and transparent process, we believe that the Commission like us would expect such a system to operate for this section of the Codes and indeed all other sections that relate to implementation of the CPRs.

We are happy to engage with the ASA on this point and we also welcome the opportunity to provide feedback on the current wording of the codes, to ensure they are in line with the text of the Directive and Regulations.

We will respond separately to the consultations which propose to delete the Distance Selling parts of the Codes and on the Priorities.

With regards to the specific questions we would respond as follows.

**Question 1** The BRC believes this would be a sensible change to the rules, as it would allow promotions where there is limited stock available, and provided customers are aware of that fact, the promotion is not in contravention of the principles in the Directive and Regulations.

However, we can see that it will still cause problems in situations where estimating demand is difficult. This is important as the nature of retailing is changing with greater use of omni channel promotions, so customers can react more quickly and secure their promotional item using the internet, tablet or mobile, also using check and reserve functionality.

As an example we would argue that possibly the third practical suggestion in the consultation document is in fact potentially misleading in that it suggests that there is a 9am cut off. The statement would lead people to believe that responders by 9.00 am would be guaranteed the promotional item or at least have a greater chance of obtaining it.

It is hard to see the difference between such detailed statements (apply by 9 am , 5000 items available) and the more generic statements prohibited in rule 8.10 ("subject to availability"). The customer may have more information, but they will not know where they are in the queue – they may be the 5001st person, so they miss out – and it's not any comfort that they missed out by 1 or 1000. When they see the promotion and the proposed additional contextual text they are unlikely to know how that will correlate to their ability to secure the promotional item, if the message indicates more than simply that stock is limited and disappointment is a possibility

A potential outcome is a compulsion to give exhaustive information about the full context of the promotion which is not practical

We would prefer to see 8.10 revoked and the text in 8.9 amended to continue to impose an obligation for promoters to make an estimate of demand, qualify the statement as suggested and permit where appropriate (e.g. where the number of units is limited, or demand cannot be accurately calculated) generic text such as "subject to availability", "strictly limited stock".

## **Question 2**

The BRC believes this is a sensible change, but would suggest there needs to also be consideration to relax the prohibition on use of particular phrases in 8.10 (provided the promoter has done everything reasonable to avoid disappointment, including a suitable statement in the text about limited stock

## **Question 3**

The BRC accepts the spirit of this change but believes it is not totally clear. It needs to be made clearer whether this applies only if promoters have made a reasonable estimate and do not provide any information about availability or likely demand or if it always applies.

Furthermore the cross reference to banned practice 19 in the Directive is we believe an example of gold plating, as banned practice 19 refers to “competition and prize promotions”, the wording in the code, rule 8.12 to all promotional offers.

We would suggest that 8.12 needs to be reworded to align it more closely with the Regulation/Directive by limiting it to competitions and prize promotions, or make it reflect the broader scope of other types of promotions but with suitable caveats to make it consistent with the actual text of the Regulations and Directive. Clearly where the promotion is buy X and receive Y, and Y is not available contract law would dictate a refund on the qualifying purchase (on return of the item) was an appropriate remedy, as opposed to having to provide an equivalent (which may not be achievable). Having said that promoters may wish to opt to provide an alternative option – e.g. buy some beer and receive a free branded beer cooler – in these circumstances if the beer cooler stock is exhausted a refund would not be appropriate (if they had already drunk it, the customer would have had free beer!) instead another (unbranded) beer cooler would be appropriate, or even different solution all together e.g. an apology and vouchers offering money off subsequent beer purchases. The wording of the code should be such that a flexible approach is allowed for promotions that are not competitions or prize promotions.

#### Question 4

The BRC agrees.

#### **Question 5**

The BRC does not agree that this change is useful as it stands because we do not want to exclude the possibility of having material that does not itself enable a consumer to take up the promotion but which advertises the promotion and refers the consumer to further material through which the consumer can participate in the promotion and thus receives all the necessary information.

In addition we do not believe the ASA remit extends to point of sale material or on-pack labelling.

In our view the ASA should stick to the wording of the UCPD/CPRs.

#### **Question 6**

The BRC accepts the amendment as more likely to be in accordance with the UCPD.

#### **Question 7**

The BRC agrees with the change.

### **Question 8**

The BRC agrees with the thrust of the change. However, it is not entirely clear. It seems to suggest that if a closing date is changed for a reason that is within the promoter's control, then it can disadvantage the consumer; it also seems to suggest that only if it is changed due to unavoidable circumstances must promoters do everything not to disadvantage those who participated within the original terms.

The use of the term "the consumer" singular is important rather than "consumers" plural – it is not sure if this is deliberate?

In our view the rule should be clear as to the circumstances in which those participating within the original terms can be disadvantaged – given that it is almost inescapable that if some sort of prize is involved the chances of winning for those that have adhered to the original conditions will be less if the date is extended and more consumers take part.

We would clearly not want to curtail on offer (e.g. buy X and get Y free) if stock was not exhausted so it would be helpful to consumers to extend the offer to ensure all customers wishing to participate could do so. The alternative would be to run promotions on a "when its gone its gone" basis, which is legitimate under the Regulations and Directive provided this is clear (see the discussion on question 1)

### **Question 9**

The BRC agrees with this change.

### **Question 10**

The BRC agrees.

### **Question 11**

The BRC agrees with the change but believes that the potential participants should be changed to the average consumer (ECJ definition) on the grounds that the makeup of potential participants cannot be known.

### **Question 12**

The BRC supports the change to bring it into line with ECJ decisions.

**Question 13**

The use of “likely to be required” is interesting, as it is a stronger statement than “could include” or “may include” which would be preferable, and we believe more consistent with the principles in the Directive.

**Question 14**

The BRC agrees.



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**CAP SALES PROMOTION RULES CONSULTATION**  
**RESPONSE FROM BRITISH TELECOMMUNICATIONS PLC (“BT”)**

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BT welcomes CAP’s proposals to amend the current rules in the CAP Code relating to sales promotions to ensure that they remain consistent with the European Unfair Commercial Practices Directives and the Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”).

BT has set out its specific comments below.

**1. Proposed amendment to Rule 8.12**

This Rule is intended to address the situation where a promoter has made a reasonable estimate of demand and has anticipated that the demand could be met. However due to an unexpectedly high response, or unanticipated circumstances outside the promoter’s control, they have been unable to meet demand. In these circumstances, proposed rule 8.12 requires the promoter to communicate with applicants and consumers and to either offer a refund or a reasonable equivalent.

In the consultation, CAP has set out that the basis for this Rule is commercial practice 19 of Schedule 1 of the CPRs (Commercial Practices which are in all circumstances considered unfair). However Commercial Practice 19 refers only to “competitions” or “prize promotions” and the “awarding of prizes”. However Rule 8.12 is broader in scope as it applies to all “sale promotions” which are described in the definitions section of the Sales Promotions part of the CAP Code, as being “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.” The non-exhaustive list of these includes: “competitions and prize draws” but also “two for the price of one” offers and “money-off offers”.

Therefore whilst we agree that in order to comply with Schedule 1 of the CPRs, promoters who run prize promotions or competitions, should be obliged to offer a “reasonable equivalent” if they are not able to offer the prize as described, this requirement should not extend to all other sale promotions as defined in the CAP Code. As CAP has noted in its consultation, the UCPD requires maximum harmonisation and the rules in the CAP Code should neither be more restrictive than the UCPD itself. Therefore Rule 8.12 should be limited to circumstances where there is a prize promotion or a competition and the prize is not offered as described.

**2. Proposed amendment to Rule 8.17.4.e**

We welcome CAP’s proposal to amend this rule to make clear that promoters may extend the closing date of offers. This approach is consistent with the approach taken by BIS and previously the OFT, both of which envisage that closing dates can be extended providing that the extension is clearly communicated to consumers and the original closing date was provided in good faith. This also corresponds with the provisions of the CPRs which list as an unfair commercial practice (Schedule 1, commercial practice 7) “falsely stating that a product will only be available for a limited time...in order to elicit an immediate decision and deprive customers of sufficient opportunity or time to make an informed choice.” It does not however prohibit extending the closing date of an offer *per se* and particularly where the original closing date was not “falsely given” but provided in good faith.

In addition, BT considers that there is a distinction to be drawn between prize promotions and competitions and other types of sale promotions. In the former case, there is a much greater chance of consumers being disadvantaged by a closing date being significantly extended as the chances of winning the prize or competition may be considerably reduced if a significant number of additional people enter the competition or promotion. However the disadvantage is less marked in the case of other sales promotions provided, as stated above, that the original closing date was given in good faith and the extension of the offer is clearly communicated to consumers.

We would therefore suggest that CAP re-word the proposed rule 8.17.4.3 to make it permissive rather than prohibitive, e.g. "A closing date may be changed either where it is unlikely to cause any consumer disadvantage, or where circumstances outside the promoters' control make a change unavoidable.'

### **3. Consistency with other regulatory frameworks**

Finally, in response to your request for general comments, we note that the Trading Standards Institute is currently reviewing the Pricing Practice Guide ("PPG") previously issued by BIS. In order to ensure that there is a consistent regulatory framework, BT would welcome CAP's assurance that they will ensure that their proposed changes are aligned with any changes proposed by TSI to the PPG.

17 December 2014



CAP Sales Promotion Consultation  
Regulatory Policy Team  
Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

16<sup>th</sup> December 2014

Dear Sir/Madam

## **Cap sales promotion rules consultation**

### **Information about The DMA (UK) Ltd**

The Direct Marketing Association (UK) Limited (DMA) is Europe's largest trade association in the marketing and communications sector, with approximately 1,050 corporate members and positioned in the top 5% of UK trade associations by income.

The DMA represents both advertisers, who market their products using 1 to 1 marketing channels, including email, mobile, social media, advertising mail and inserts, and specialist suppliers of 1 to 1 marketing services to those advertisers - for example, advertising agencies, outsourced contact centres etc.

The DMA also administers the Mailing Preference Service, the Telephone Preference Service and the Fax Preference Service. On behalf of its membership, the DMA promotes best practice through its DMA Code, in order to maintain and enhance consumers' trust and confidence in the direct marketing industry.

The Direct Marketing Commission is an independent body that monitors industry compliance. Please visit our website [www.dma.org.uk](http://www.dma.org.uk) for further information about us.



## Consultation

The DMA welcomes this opportunity to comment on proposed amendments to the rules in the sales promotion section of the CAP code in order to accurately reflect the provisions of UCPD and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).

### Consultation Questions

**Question 1: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.9 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and that they were capable of meeting that response.**

**Proposed rule:**

**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 to make an informed decision on whether or not to participate – for example regarding any limitation on availability and the likely demand.**

The DMA agrees that a promotion which has limited availability of the promotional items will not necessarily breach the terms of the CPRs providing a consumer has all the information needed about the promotion, including any limitations on availability, to make a decision whether to participate. This would allow promoters to have a promotional offer on a product that may be of limited availability as long as they are transparent about how many are available and the likely demand for the promotional product.

**Question 2: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.11 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items of the number of those items is limited.**



**Proposed rule:**

**8.11 Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items of the number of those items is limited, unless the limitation is sufficiently clear at each stage for the consumer accurately to assess whether participation is worthwhile.**

The DMA agrees to the change as this reflects the change to 8.9 above and would allow promoters to run such a promotion as long as they were clear and transparent as to any limitation, so consumers could assess for themselves whether to participate.

**Question 3: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.12 If, having made a reasonable estimate as in rule 8.9, it is unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside its control, the promoter must ensure relevant communication with applicants and consumers and offer a refund or a substitute product in accordance with rule 9.5**

**Proposed rules:**

**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 offer a refund or a reasonable equivalent.**

The DMA agrees to the proposed change in respect of promoters who have estimated the response as per new rule 8.9 and the reference to a refund of reasonable equivalent to ensure compliance with banned practice 19 in the CPRs. The DMA would also agree to the deletion of the cross reference to 9.5, irrespective of the outcome of CAP's concurrent consultation on the removal of section 9: Distance Selling, as rules should ideally stand alone, and the proposed wording allows the rule to be complete without the need for a cross reference to another rule within the CAP code.

**Question 4: Do you agree that the deletion of this rule is necessary and that the harm described will continue to be prevented?**

**Present rule:**

**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**



The DMA agrees to the deletion of this rule irrespective of the outcome of CAP's concurrent consultation on Section 9. Rule 9.4 and 9.5 deal with post contractual matters which have more reference to purchases and not to sales promotions. The DMA would agree that rule 8.15.1 would prevent the harm caused by the removal of rule 9.4 and 9.5 with reference to sales promotions.

**Question 5: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.17 Before purchase or, if no purchase is required, before or at the time of entry or application, promoters must communicate all applicable significant conditions. Significant conditions include:**

**Proposed rule:**

**8.17 Marketing communications or other material referring to sales promotions must communicate all applicable significant conditions the omission of which are likely to mislead. Significant conditions may, depending on the circumstances, include:**

The DMA agrees with the proposed changes to rule 8.17. It is right to reflect the way the ASA interprets this rule to make it clear to promoters and provide consistency with rule 3.3. The DMA would also agree to the inclusion of "other material referring to sales promotions", which would normally not be part of the CAP code remit, to ensure that any mention of the sales promotion, for example at the point of sale, would be covered by the rule.

The DMA concurs that on strict interpretation of the wording of 8.17, significant conditions could be omitted from marketing communications, as long as they were provided before entry. Marketing communications about a promotion are often received much earlier in the sales promotion process than entry dates, and adding in significant conditions just prior to entry could lead to consumers being misled. The addition of the second proposed additional wording should make it clear that promoters can only omit significant conditions from their marketing communications if the omission could never be misleading.

The addition of the last proposed additional wording would also allow promoters to decide what significant conditions they need to inform potential entrants about, as long as they can justify their decision if a complaint was made. This seems more in line with the CPRs.



**Question 6: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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 always need a closing date.**

**Proposed rule:**

**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** always need a closing date.**

The DMA feels that children are especially vulnerable in respect of sales promotions directed at them and they do need greater protection and would consider that any sales promotion aimed at them should have a closing date. If CAP consider the present rule is more restrictive than the CPRs, the DMA ask that CAP provide guidance to promoters on when a closing date should be provided for a sales promotion addressed to or targeted at children or give examples in the rule, similar to 8.17.4.a with the exception of loyalty cards as these are not applicable to children.

**Question 7: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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.**

**Proposed rule:**

**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.****

The DMA believes that the inclusion of the words "if the omission of that information is likely to mislead" allows promoters to use their own judgement and omit this information if they are confident it does not mislead consumers. Many promoters will have had many years' experience of promotions, but as with question 6 above, guidance or examples on this point would be useful to help all promoters comply.



**Question 8: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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.**

**Proposed rule**

**18.17.4.e Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed **in a way that is likely to disadvantage the consumer**. If **because of unavoidable circumstances** they are changed, promoters must **still** do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged.**

The DMA feels that changing closing dates should be discouraged as this can lead to serious detriment to those consumers who have already entered the promotion. The DMA however understand that things completely outside the control of the promoter can occur which could lead to a change in the closing date, provided the change does not cause a disadvantage to consumers. The ASA is used to assessing the impact of promoters' actions and therefore the DMA see no detriment to consumers if the change to this rule goes ahead.

**Question 9: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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.**

**Proposed rule:**

**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 consumers to assess whether participation is worthwhile.****

The DMA agree to the additional wording for this rule. It brings it into line with the proposed 8.9 and 8.11 in allowing promoters to run a promotion with limited stock as long as the consumer is fully aware of this and can then make a decision whether to enter.





**Question 10: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any other terms for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, 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.**

**Proposed rule:**

**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 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.**

The DMA agrees that the amended wording of the rule does explain the difference between “gifts” and “prizes” and allows promoters to use the most appropriate description for their promotion as long as the distinction between the two is clear and consumers are not misled into believing they have won a “prize” when actually it is a “gift” for participating.

**Question 11: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.23 Promoters must avoid complex rules and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them: the rules must contain**



**nothing that could reasonably have influenced consumers against buying or participating.**

**Proposed rule:**

**8.23 Promoters must avoid rules **that are too complex to be understood by potential participants** and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them: the rules must contain nothing that could reasonably have influenced consumers against buying or participating.**

The DMA can see the reason for the proposed amendment and would agree that complex rules for a promotion would be acceptable as long as the potential participants understand them. This is about understanding the target audience for your promotion. At present the rule does not allow complex rules in any circumstances, so the amendment allows more flexibility for promoters, as long as they can justify the use of more complex rules.

**Question 12: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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.**

**Proposed rule:**

**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.**

The DMA agree that the provisions of CPRs and the CJEU judgment in the case of Purely Creative Limited and others v Office of Fair Trading in 2012 means that the winner of a prize is entitled to claim that prize free of any cost, and therefore the word “unreasonable” should be removed from the rule.



**Question 13: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**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 before or at the time of entry:**

**Proposed rule:**

**8.28 Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions **are likely to be required** to specify **clearly** before or at the time of entry:**

The changes to this rule are consistent with the greater flexibility required as a result of the CPRs and would allow for promoters to decide what they need to include and to justify that decision if challenged.

**Question 14: Do you agree with the amended wording of this rule? If not, please explain why.**

**Present rule:**

**8.28.5 how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners must not be compromised by the publication of excessive personal information.**

**Proposed rule:**

**8.28.5 how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries **except for when promoters are subject to an absolute 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.**

The DMA understand the rationale behind the proposed amendment to this rule and agrees to the proposed wording.



**Question 15: Do you have any general comments on the changes proposed by CAP to the sales promotion rules, or on the sales promotion section in general?**

The DMA believe that the proposed changes to various rules will ensure that they comply with current legislation affecting consumers, but they also offer promoters a degree of flexibility in some areas. They can use their judgement and experience to run a promotion that is appealing to consumers but is clear and transparent.

The proposed changes will also allow the ASA more flexibility to consider complaints on a case by case basis and look at the decisions by promoters and assess whether the rules are working to make advertising responsible.

**Conclusion**

The DMA look forward to the outcome of the consultation once CAP has considered all responses and to the introduction of the agreed rules in 2015.

Yours sincerely

Janine Paterson  
Solicitor & Legal Manager  
The Direct Marketing Association (UK) Ltd  
Email: [REDACTED]  
Tel: [REDACTED]



CAP Sales Promotion Consultation  
Regulatory Policy Team  
Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
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WC1V 6QT

**E.ON Energy Solutions Limited**  
Newstead Court  
Little Oak Drive  
Sherwood Park  
Annesley  
Nottinghamshire  
NG15 0DR  
eonenergy.com

Joanna Webb  
[REDACTED]

**Tuesday 16 December 2014**

**Dear Sir or Madam**

**CAP Sales Promotion Rules Consultation**

E.ON welcomes the opportunity to respond to the CAP Sales Promotion Rules Consultation. As an energy provider we are subject to strict licence conditions; the proposed changes to the CAP Sales Promotion Rules stand to support the Standards of Conduct which are part of our licence. So whilst we will adhere to the CAP Code in our marketing activity, we may take precautions over and above the code to ensure compliance with our licence conditions.

We agree with all the proposed changes discussed in questions one to fourteen of the CAP Sales Promotion Rules Consultation. We also have no additional comments about the changes proposed by CAP to the sales promotion rules.

We would be happy to discuss any aspects of our response with you further, and if you have any questions please call me on [REDACTED] or email me at [REDACTED]

Yours faithfully

Joanna Webb  
Senior Regulatory Analyst

[REDACTED]

---

**From:** Hina Parmar [REDACTED]  
**Sent:** 12 December 2014 16:49  
**To:** Sales Promotions  
**Subject:** Sales promotion consultation

Dear sirs

Please find the IPM's response to this consultation below.

Many thanks.

**"The IPM were grateful to be involved in helping draft the changes to the Sales Promotion rules. We welcome and fully support the changes".**

**Hina Parmar**  
Legal & Compliance Manager

**The Institute of Promotional Marketing**  
70 Margaret Street  
London  
W1W 8SS

[REDACTED]  
[REDACTED]

***The IPM is keen to understand your views and would greatly appreciate if you could take (less than 5 minutes) to complete a short survey found [here for members](#), and [here for non-members](#). Thank you!***

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 08 December 2014 10:50  
**To:** Sales Promotions  
**Subject:** Proposed Amendments to CAP Code

Hello,

I work as an adviser to businesses in relation to consumer protection legislation. I am a Trading Standards Practitioner.

I am confused by the proposed amendment below as it appears to cover two different issues.

Firstly I had always believed that it is necessary and important for promoters of prize promotion to be transparent and publicise the names and counties of winner for example "Mrs Scott of Edinburgh wins the trip to London". This, I believed, was to reassure other entrants that the prize had actually been awarded and encourages transparency by the promoter.

Secondly if the promoter wishes to use the winner in any sort of publicity or take their photograph being awarded the prize etc then this can only happen if the entrant has agreed to this.

So the amendment below would appear to merge these two points and negate the first requirement above. If this is the intention then I believe that this would remove an important requirement that ensures that the awarding of prizes is genuine and gives other entrants comfort that the promotion is a genuine one.

Kind Regards

Wendy Potts  
Director  
Legaleyes Ltd



#### **Question 14**

##### **Present rule:**

**8.28.5** *how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners must not be compromised by the publication of excessive personal information*

##### **Proposed rule:**

**8.28.5** *how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries except for when promoters are subject to an absolute 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*

##### **Rationale:**

This proposed amendment does not relate to UCPD but has been proposed by CAP following legal advice which highlighted that some organisations, such as National Savings & Investments (NS&I), have statutory obligations which prevent them from publishing details of prizewinners.

The legislative requirements imposed on NS&I include an absolute duty to keep the names of account-holders confidential. For the avoidance of doubt, this rule does not refer to the Data Protection Act, which only prohibits the publication of names where prior consent has not been obtained; promoters would normally be expected to include consent to publish appropriate details as a condition of entry.

**Question 14:** Do you agree with the amended wording



Topic:		Date:
CAP Consultation Sales Promotion		8 Dec 2014
Issue:		
		V1 JS

## PROMOVERITAS RESPONSE TO CAP SALES PROMOTION consultation Dec 2014

PromoVeritas have been operating in the field of promotional compliance for over 12 years and run hundreds of promotions every year for most of the major brands and agencies in the UK (and increasingly overseas). Our responses below are based on this experience and a pragmatic view of the industry and its needs.

### Question 1

#### Present rule:

*8.9 Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and that they were capable of meeting that response.*

#### Proposed rule:

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 to make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

#### Rationale:

While the present rule requires promoters to make a reasonable estimate of the likely response to the promotion, it then requires that estimate to be met.

The proposed amendment requires promoters to make a reasonable estimate of the likely response to the promotion and then show either that they will meet that response or clearly communicate to consumers that demand might exceed availability.

CAP considers a promotion which is sufficiently clear as to the availability of the relevant promotional item to enable the consumer to make an informed transactional decision is likely to be permitted by the CPRs and hence may not be prohibited even if it offers a limited number of promotional items. To avoid the potential to mislead, CAP considers it might be helpful for consumers to know the extent of availability as well as the likely uptake to allow them to make a decision whether to participate.

In many promotions, there is potential for a consumer to feel disappointed if they do not obtain the promotional item. That disappointment might be exacerbated if they also feel they have been misled about the likelihood of them obtaining the item in the first place. If promoters ensure that they are transparent about the likely demand, they are more likely to meet the requirements of the CPRs whilst minimising consumer disappointment and maintaining the reputation of the promotions industry.

Even in cases where the promoter knows from the outset that the number of promotional items will be limited, making a reasonable estimate of demand at the outset would enable that promoter to frame the offer in a way that empowers the consumer to make an informed

decision on whether to participate, and how likely they are to benefit, thereby minimising the potential for disappointment.

Promoters could comply with the amended rule by, for example, including practical information such as '5000 available, likely to run out quickly', 'vouchers available for first 500 customers', or 'visit our promotional stand before 9am to avoid disappointment'.

The proposed amendment would allow the ASA to assess promotions on a case-by-case basis.

**Question 1:** Do you agree with the amended wording of this rule? If not, please explain why.

#### PromoVeritas comments and Amend

Too often promoters can argue that the information was available, it was just that it was not well communicated to the public. Our amend links with the CAP proposed amend to 8.11 which talks about limitations being made sufficiently clear. Our proposed amend seeks to deal with this:

**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 were provided with sufficient information, clearly communicated, such that they could make an informed decision on whether or not to participate - for example regarding any limitation on availability and the likely demand.

#### Question 2

##### Present rule:

**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.

##### Proposed rule:

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

##### Rationale:

This proposed amendment reflects the proposed change to 8.9 (Question 1) and has the same effect of requiring the promoter to include information that enables the consumer to assess whether to participate.

**Question 2:** Do you agree with the amended wording of this rule? If not, please explain why

#### PromoVeritas comments and Amend

YES we agree with the recommendation, although we might amend it to 'is MADE sufficiently clear....'

#### Question 3

##### Present rule:

**8.12** If, having made a reasonable estimate as in rule 8.9, it is unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated

*factor outside its control, the promoter must ensure relevant communication with applicants and consumers and offer a refund or a substitute product in accordance with rule 9.5.*

**Proposed rule:**

**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 offer a refund or a reasonable equivalent.

**Rationale:**

This proposed update reflects and is contingent upon the amendments proposed to 8.9 (Question 1) and 8.11 (Question 2) and refers to promotions where a promoter had intended to meet the estimated demand.

The proposed deleted reference to rule 9.5 reflects CAP's concurrent consultation which itself proposes to delete Section 9: Distance Selling from the Code; CAP proposes to amend the wording to require promoters to offer a 'reasonable equivalent' in order to reflect banned practice 19 of UCPD.

**Question 3:** Do you agree with the amended wording of this rule? If not, please explain why.

**PromoVeritas comments and Amend**

YES we agree with the recommendation, although the literal reading does seem to imply that if a promoter has no estimate or does not intend to rely on any estimate that they have prepared, then they have no liability or requirement to communicate with entrants or provide a refund or substitute product under this clause. It should be required for all – good promoters with good estimates, and bad promoters who never had an estimate.

**Question 4**

**Present Rule:**

**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.

**Rationale:**

This rule is proposed to be deleted. CAP is reviewing the distance selling sections of the Code in light of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and proposes to delete rules 9.4 and 9.5 which are referred to here. CAP considers the harm described by this rule continues to be prevented by existing rule 8.15.1, which requires promoters to award prizes as described, or their reasonable equivalent. CAP will consider responses to this proposal alongside responses to the consultation on Distance Selling rules.

**Question 4:** Do you agree that the deletion of this rule is necessary and that the harm described will continue to be prevented

**PromoVeritas comments and Amend**

YES we agree with the recommendation

**Question 5**

**Present rule:**

*8.17 Before purchase or, if no purchase is required, before or at the time of entry or application, promoters must communicate all applicable significant conditions. Significant conditions include:*

**Proposed rule:**

**8.17** Marketing communications or other material referring to sales promotions must communicate all applicable significant conditions the omission of which are likely to mislead. Significant conditions may, depending on the circumstances, include:

**Question 5:** Do you agree with the amended wording of this rule? If not, please explain why.

**PromoVeritas comments and Amend**

We agree with the principle but think it would benefit from a slight amend:

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

The use of the word ALL reinforces the importance of this clause, that it is not optional, and the second amendment ensures that even information that for whatever reason is not part of the formal Terms & Conditions, should be communicated, where relevant.

**Question 6**

**Present rule:**

**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 always need a closing date*

**Proposed rule:**

**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

**Rationale:**

CAP considers the present rule is likely to be more restrictive than UCPD; the amendment grants additional flexibility for promoters while continuing to allow the ASA to assess the effect on a consumer's transactional decision on a case-by-case basis.

**Question 6 :** Do you agree with the amended wording of this rule? If not, please explain why?

**PromoVeritas comments and Amend**

NO we see no reason to soften this clause. Of course ASA can assess 'any consumer detriment on a case by case basis, but the facts are that this will always be after the event – after the packs are printed and in the shops and a complaint has been made. We should not be frightened of being a little tougher than UCPD. Keep as is.

**Question 7**

**Present rule:**

**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*

**Proposed rule:**

**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

**Rationale:**

CAP considers the present wording is likely to be more restrictive than UCPD allows; the more conditional wording grants additional flexibility for promoters while continuing to allow the ASA to assess the effect on a consumer's transactional decision on a case-by-case basis.

**Question 7:** Do you agree with the amended wording of this rule? If not, please explain why ?

**PromoVeritas comments and Amend**

YES We agree with this. Here the possible detriment is limited, and there may be circumstances where a different start point for the deadline is relevant

**Question 8**

**Present rule:**

**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*

**Proposed rule:**

**8.17.4.e** Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed in a way that is likely to disadvantage the consumer. If because of unavoidable circumstances they are changed, promoters must still do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged.

**Rationale:**

CAP considers this proposed amendment is likely to reflect the provisions of UCPD by permitting a promoter to change a closing date where that is not likely to cause any consumer disadvantage. The ASA is accustomed to considering issues such as whether a change was likely to disadvantage a consumer, or whether specific circumstances were 'unavoidable'.

**Question 8:**

**PromoVeritas comments and Amend**

We agree with the principle but think that we should be clearer in the phrasing to avoid dates being changed and better link the two circumstances where it is permitted - where it is outside of promoters control AND consumers are not disadvantaged. It is a common problem and causes issues.

**8.17.4.e** Closing dates must not be changed, unless circumstances outside the reasonable control of the promoter make it unavoidable AND the change does not disadvantage the consumer. If because of unavoidable circumstances a closing date is



changed, promoters must **still** do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged.

#### Question 9

##### Present rule:

**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*

##### Proposed rule:

**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.

##### Rationale:

This proposed amendment reflects the proposed amendments of rules 8.9 and 8.11 in permitting promoters to run limited-availability offers, as provided by UCPD, while ensuring that consumers have the information they require to make informed decisions on whether to participate in a promotion.

**Question 9:** Do you agree with the amended wording of this rule? If not, please explain why.

##### PromoVeritas comments and Amend

YES

#### Question 10

##### Present rule:

**8.19** *Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any other term for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, 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.*

##### Proposed rule:

**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.

##### Rationale:

This proposed amendment clarifies that the intention of this rule is to prevent consumers from being misled into thinking they are in a lucky minority, by requiring the promoter to provide enough information to demonstrate what proportion of participants will obtain a prize or gift. It remains likely that 'gift' will ordinarily mean an item awarded to a significant proportion while a 'prize' is a more valuable item awarded to a small minority, but the amended wording allows for the promoter to use the most appropriate descriptor, as long as the consumer is not misled as to the relative value of the item awarded to them.

**Question 10:** Do you agree with the amended wording of this rule? If not, please explain

#### PromoVeritas comments and Amend

YES We agree with the amend

#### Question 11

##### Present rule:

**8.23** *Promoters must avoid complex rules and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.*

##### Proposed rule:

**8.23** Promoters must avoid rules that are too complex to be understood by potential participants and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.

##### Rationale:

The present rule prevents prize promotion rules from being 'complex'; in the light of UCPD, CAP acknowledges that 'complex' rules might not necessarily be impermissible, depending on the circumstances. The proposed amendment retains the requirement for promoters to ensure that rules are clear to potential participants.

**Question 11:** Do you agree with the amended wording of this rule? If not, please explain

#### PromoVeritas comments and Amend

We agree with the principle but feel that the wording is open to interpretation – there is no quality filter on participants being able to understand. If one participant can understand the rules does that make them okay, or if one cannot understand them does that make them not okay ?

The second amend just brings the two requirements closer together – to tell, and not disadvantage.

**8.23** Promoters must avoid rules that are overly complex and unlikely to be understood by a significant proportion of potential participants and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them AND the AMENDED rules must contain nothing that could reasonably have influenced consumers against buying or participating.

#### Question 12

##### Present rule:

**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.*

**Proposed rule:**

**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.

**Rationale:**

CAP proposes to delete the word 'unreasonable' from this rule to reflect CJEU case law<sup>6</sup>, which clarifies that it is unacceptable for consumers to pay for claiming a prize. This requirement is also reflected in present rule 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*"<sup>7</sup>.

**Question 12:** Do you agree with the amended wording of this rule? If not, please explain

## PromoVeritas comments and Amend

### NO This amend will cause great concern to the industry

- Using internet to claim a prize– will this be classified as a cost !
- Cost of phoning in to claim a prize – a regular 01/02 number is generally part of an inclusive package on mobiles, so effectively free. But there is a cost for calling an 0800 number. On a landline it is the opposite, free to 0800 but a cost to 01 / 02. All such costs are generally minimal, would they be counted as a cost under this clause ?
- Postage – of course promoters can supply Freepost facilities, BUT these do not work for Signed For / Secure courier type services that are recommended for higher value prizes in order to avoid loss in transit etc.
- Postage – would it be acceptable to ask consumer to pay for secure shipment and then refund them the full price with their prize. They have 'paid' but not for long !
- Ticket type prizes – frequently one can win a ticket to a concert, but collection is at the door. So winner has to pay to get to the venue ( to 'claim the prize') Or is this deemed to be 'collect the prize, not claim it. . Even if the ticket was posted, to benefit from the prize they still have to pay for their own travel. The same will apply to holidays – unless we pick the winner up from their home and pay for everything it could be claimed that there was a cost to the winner.

**Whilst we appreciate that the UCPD and the ECJ case provide a benchmark this amend needs very careful consideration.**

### Question 13

**Present rule:**

**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 before or at the time of entry*

**Proposed rule:**



**8.28** Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions are likely to be required to specify clearly before or at the time of entry:

**Rationale:**

As with 8.17, CAP considers this amendment is likely to make the rule consistent with UCPD by allowing the ASA to consider on a case-by-case basis whether omitting this information is likely to mislead the consumer.

**Question 13:** Do you agree with the amended wording of this rule? If not, please explain

**PromoVeritas comments and Amend**

It seems to be a softening, but acceptable

**Question 14**

**Present rule:**

**8.28.5** *how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners must not be compromised by the publication of excessive personal information*

**Proposed rule:**

**8.28.5** how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries except for when promoters are subject to an absolute 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

**Rationale:**

This proposed amendment does not relate to UCPD but has been proposed by CAP following legal advice which highlighted that some organisations, such as National Savings & Investments (NS&I), have statutory obligations which prevent them from publishing details of prizewinners.

The legislative requirements imposed on NS&I include an absolute duty to keep the names of account-holders confidential. For the avoidance of doubt, this rule does not refer to the Data Protection Act, which only prohibits the publication of names where prior consent has not been obtained; promoters would normally be expected to include consent to publish appropriate details as a condition of entry.

**Question 14:** Do you agree with the amended wording of this rule? If not, please explain

**PromoVeritas comments and Amend**

YES but is London a County ?? How does it work where it is a multi country promotion and some winners may come from UK, but others from eg France where they have no 'Counties'. Region or Locality ??

A slight amend will also reduce the temptation of regular FMCG brand promoters to feel that they could avoid their obligations – by stressing that there are only limited circumstances where the law is a problem in this respect !

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 an absolute 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

#### **Additional Question**

**Question 15:** Do you have any general comments on the changes proposed by CAP to the sales promotion rules, or on the sales promotion section in general?

We are most concerned by the amend to 8.25 which will have a strong impact on the industry. Of course we understand that it is the UCPD that is driving this change, but we feel that the changes of a legal case relating to the cost of a stamp in a promotion is very small, whereas once incorporated into the CAP Code there is a far higher chance of complaints. Not mentioning it at all in the Code would have been preferable.

One other minor point – the consultation and the CAP Code section is entitled Sales Promotion. Whilst this phrase is still used by some, for most the industry has move onwards and is now generally called Promotional Marketing. Even the industry body has moved from being the ISP to the IPM. Perhaps CAP could consider such a change themselves.



CAP Sales Promotions Consultation  
Regulatory Policy Team  
Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
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East Lothian Council  
John Muir House  
Haddington  
EH41 3HA

15 December 2014

Dear Sir/Madam,

CAP Sales Promotions Consultation

The Society of Chief Officers of Trading Standards in Scotland, SCOTSS, is the professional body representing the lead officers for Scottish Local Authority Trading Standards Services. On behalf of the Society I welcome the opportunity to respond to your consultation of November/December 2014.

SCOTSS welcomes the decision to review the sales promotion rules to reflect the UCPD and CPRs and associated case law. We have broadly agreed with all of the proposals but where we have suggested a slight amendment we hope that this is useful to you.

I trust that you find this response helpful and I am happy for you to share our response as you wish.

Yours Sincerely

Tony McAuley  
SCOTSS Chairman



## CAP Sales Promotion Rules Consultation

### Response by SCOTSS

Q1 – Q3. These rules are complementary and, read as a whole, we agree with the amendments.

Q4. Agreed. The amendment would not lead to any potential for consumer detriment as cases will be judged on their individual facts.

Q5. A welcome improvement. In particular, the fact that under the current rule significant conditions could be omitted as long as they were communicated before entry whereas the proposed amendment will apply to “marketing communications”.

Q6. Agreed.

Q7. Agreed.

Q8. Agreed. It seems unlikely that the changing of a closure date which did not cause any consumer disadvantage would have led to any complaints however we accept that the wording requires to be changed due to the need for UCPD harmonisation.

Q9. Agreed.

Q10. Agreed.

Q11. Agreed. However the amendment may be clearer if “they must” is inserted between “and” and “only exceptionally”.

Q12. Agreed.

Q13. We accept the reasoning as to why this should be amended however, instead of adding the vague statement “are likely to be required” we suggest the wording “In addition to Rule 8.17, where the omission of any of the specified items is likely to mislead the consumer, prize promotions must specify before or at the time of entry:.....”

Q14. Agreed.

Q15. SCOTSS welcomes the decision to review the sales promotion rules to reflect the UCPD and CPRs and associated case law and we are grateful for the opportunity to respond. We have broadly agreed with all of the proposals but where we have suggested a slight amendment we hope that this is useful to you.



Mrs Sandy Driskell  
Information Officer  
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By Email

CAP Sales Promotion Consultation  
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Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT

12 December 2014

Dear Sirs

CAP Sales Promotion Rules Consultation - 2014

As you will be aware but for the benefit of any others reading this response, the Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors. Further brief information about TSI is provided in the postscript to this letter.

Joint TSI Lead Officer for Fair Trading Martin Fisher attended an NTSB fair trading specialist officers meeting in London a couple of weeks ago, on the agenda of which was a meeting with three senior officers from ASA/ CAP. Amongst other issues, this code revision was discussed. The trading standards side had no objections to any of the changes. Neither have any of the Institute's Members or Advisers raised any objections.

The Trading Standards Institute can, therefore, simply state that we agree with the proposed changes.

If you would like to discuss this response with us, please do not hesitate to contact [REDACTED]

We do not regard our opinion to be confidential and we are happy for it to be published.

Yours faithfully

A handwritten signature in black ink that reads 'Sandy Driskell'.

Sandy Driskell  
Information Officer



Certificate No. FS 570376

The Trading Standards Institute is a company limited by Guarantee. Registered in England and Wales. Register Number 38769. Registered office: 1 Sylvan Court, Sylvan Way Southfields Business Park Basildon, Essex SS15 6TH VAT Reg. No GB 795 8626 60

## The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally. TSI campaigns on behalf of the profession to obtain a better deal for both consumers and businesses.

Local authority trading standards services have for some years promoted public health through, for example, tobacco control activities (thus reducing smoking prevalence); food standards and labelling (tackling nutrition); and reducing the illegal supply of age restricted products such as alcohol to young people. This role gained in importance recently when, as part of its health reforms, the government repositioned public health back into English local government.

We are also taking on greater responsibilities as the result of the government's announcement in October 2010 that trading standards is one of the two central pillars of the new consumer landscape (the other being Citizens Advice).

The TSI Consumer Codes Approval Scheme, established at the request of the government to take over from the OFT scheme, went live in April 2013 and was formally launched in June 2013.

TSI is a member of the OFT's Consumer Protection Partnership which was set up by the government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We have taken over responsibility for business advice and education.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

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