Key prize promo rule changes in new CAP and BCAP Codes

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Topic: Promotion marketing

Who: Committee of Advertising Practice

Where: UK

When: 1 September 2010

Law stated as at: 1 September 2010

What happened:

Mostly cosmetic changes

In March of this year, the Advertising Standards Agency ('ASA') and the Committee of Advertising Practice conducted a review of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the Cap Code) and produced a new code that came into force on 1 September 2010.

The changes to the new CAP Code are for the most part cosmetic and further clarify the existing provisions. One of the more obvious changes, however, is to replace the word 'should' with the word 'must' – an indication that the ASA is insisting on compliance. On the issue of compliance, there is a new clause that provides that where there is doubt regarding whether the marketing communication is within the remit of the CAP Code that where the material appears in paid-for space, it is more likely to be caught by the code.

The layout of the new code sets out principles that should be followed in respect to each section, which reinforces the idea that the spirit of the code and not the absolute letter of it should be followed.

Sales promotion rules updated

Many of the changes apply to sales promotions (Section 8) and a few of the key changes in this area are:

Key changes

- Where the promoter is unable to supply demand due to unexpectedly high responses or some other unanticipated factor outside of its control, the promoter must now ensure that there is relevant communication with the applicants and consumers.
- Where the exact number of prizes cannot be predetermined, an estimate should be provided in the terms and conditions.
- Where a sales promotion is significantly limited by time or space, as much information about significant conditions as practicable must be

included and consumers directed to an easily accessible alternative source where all the significant conditions are prominently stated.

- An independent judge on a panel of judges must now be demonstrably independent, especially from the competition's promoters and intermediaries and from the pool of entrants from which the winner is picked.
- Prize draws may now be drawn by a verifiably random computer process as opposed to under the supervision of an independent observer.
- A gift will be an item that a 'significant proportion' of entrants will receive and can therefore not be called a prize.
- The six-week period for a prize winner to receive their prize (or an alternative date be inserted into the terms and conditions) has been reduced to 30 days.

More coherent regulation

Why this matters:

The review has brought the new CAP Code in line with current legislation and makes for more coherent regulation. The BCAP code has also been updated and the previous four separate codes have all been brought together into one. Furthermore, the Direct Marketing Association has updated its non-binding code to bring it in line with the new CAP Code.

How the ASA will apply and enforce the codes will have to be seen going forward, but although there may have been no dramatic changes to the CAP Code these tweaks to the sales promotion rules underline that marketers should check the sections that chiefly concern them as their practices may need to change to ensure they are not in breach.

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