

Promotional competitions - Don't leave it up to chance

The creativity of those tasked with devising promotional competitions has been severely constrained by legislation in terms of the Lotteries Act which recently came into operation.

By [Emma Kingdon](#) 25 Jun 2003

As well as regulating the National Lottery, the Lotteries Act controls promotional competitions, which it defines as any game, scheme, arrangement, system, plan or device for distributing prizes by lot or by chance, conducted for the purpose of promoting the sale or use of any goods or services.

Anyone who holds, conducts, promotes, organises or in any other way is directly associated with the management or execution of a promotional competition should take note of section 54 of the Lotteries Act, which became effective on 2 May 2003, and the recently published Regulations in respect of Promotional Competitions, which were promulgated on 16 May 2003. This could be you, if you are a manufacturer, producer or retailer of goods, or a provider of services, and you make use of promotional competitions to promote your goods or services, or if you are engaged in the advertising, marketing or promotions industry.

Apart from restrictions on the price and type of the goods or services sold as part of the promotion, restrictions are placed on the type of promotion used and the prize offered. The competition itself may not resemble anything substantially similar to the National Lottery or any competition, game or sports pool conducted by the National Lottery. Furthermore, the prizes offered in terms of the promotional competition may not be substantially similar to those offered by the National Lottery at the same time. Therefore, cash prizes, being the giving away of "readily available money" or "immediate payment", are ruled out.

The regulations also provide that if a licence or other type of permission is required to enjoy the prize, the prize is prohibited. In addition, the prize cannot be such that its possession, enjoyment or use, or even the delivery thereof, requires the payment of a fee or consideration to any person. The Marketing Federation of Southern Africa has correctly pointed out that these particular provisions eradicate a wide range of popular prizes, such as cars (where a licence is required for lawful use) and any type of electrical appliance (where electricity must be paid for in order to be operative). Whether this is the intention of the legislature is questionable, and guidelines should be obtained from the National Lottery Board in this regard.

Additional provisions regulate the contents of material advertising the promotional competition, the endorsement of the product or service by the winner, and who may (or may not) participate. Section 54 in particular seeks to protect consumers from prejudicial or deceptive marketing techniques and from collusive or anti-competitive conduct on the part of "promoters".

Anyone found guilty of infringing this legislation is guilty of an offence, and therefore caution needs to be exercised, not only in the drawing up of competition rules, but also in the creative process preceding the implementation of a campaign.

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