

Briefing Note: Sales Promotions

Introduction

This Briefing Note contains an introduction to the various types of sales promotions most commonly used by businesses. It should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

What is a sales promotion?

- A sales promotion is a marketing device designed to encourage the purchase of a product or service (for example, a competition or prize draw).
- There are laws and voluntary codes that govern most sales promotions, so you should take legal advice before holding any type of sales promotion. Failure to comply could result in your business having to withdraw the campaign, being fined, being sued, suffering adverse publicity and facing possible criminal prosecution.

Prize competitions

Success in a competition must depend to a substantial degree on the exercise of skill. Additionally participation can be made dependent on the payment of a contribution.

A competition should not merely consist of guessing the outcome of a race, competition or other event, or guessing whether or not something will happen or is true, as these types of promotions can create legal problems. For example a combination of payment, chance and prize would make the competition an illegal lottery.

Prize draws

- A prize draw is a scheme in which prizes are allocated by chance but there is no entry charge. In Great Britain, a business is allowed to require a purchase of a particular product as a condition of entry, but the price of the product cannot be inflated to cover the cost of the promotion, otherwise the draw will be deemed a lottery. In Northern Ireland these rules are slightly different.
- With a few exceptions (for example, the National Lottery), running a lottery requires numerous licences and compliance with various laws.
- Your business can restrict entry to include only those individuals who accept certain conditions (for example, providing personal information).
- If the draw is open to all, the winner must be determined by chance, as everyone must have an equal chance of success regardless of how they entered.
- In an “instant win” draw, participants should be able to get their prize immediately or know they have won and how to claim their prize without delay, cost or hassle.
- Participants should only receive prizes as they were described when they entered the draw, or a reasonable equivalent.

Do not create a false impression that a consumer has already won a prize if there is no prize, or the customer has to incur a cost to claim the prize, as this is a criminal offence.

Briefing Note

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Summary:

A short guide to the legal aspects of sales promotions used by businesses.

For detailed advice on all Commercial Contract matters please contact:

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Price and value promotions

- A price promotion does not have to be of a particular product; it could be money off or free extra volume or value.
- To comply with rules and regulations the promotion must be a genuine price reduction or increase in volume that is applied for a particular period of time. In addition your business must say when the offer ends or that it is “subject to availability”. To make sure you can uphold the promise of a prize you should ensure that you estimate demand for the offer as accurately as possible.
- The promotion must always be clear and not misleading. The comparison with the regular price or amount must be clearly marked and should not be ambiguous. A participant should not be left to question whether they’re getting 10% more volume or the same volume for 10% less cost, as this should be clear from the start.
- The goods must be the same quality and size as normally priced goods.

Price reductions and sales

- If your business is comparing the price to your previous or usual price (including for volume promotions), then the previous price should have been the most recent price available for 28 consecutive days or more and comparisons should not be made with prices that were last offered more than six months ago. Your business can then reduce the sale price further if you wish, as long as you mention the interim price. Businesses must be able to provide proof of all prices used in comparison exercises, so it is important to keep records of any sales promotions.
- Your business cannot suggest the sale is for a shorter period of time than you intend. However, you can extend the sale period if you clearly announce it is an extension.
- Notices saying, for example, “up to 50% off” can only be used if the maximum reduction quoted applies to at least 10% of the range of products on offer.

Introductory offer price

When introducing a new product the introductory offer must be limited in time. In addition the new product under promotion must be available after the promotion has ended at the same outlet but at the higher price. Remember that claiming an offer is limited when it is not is a criminal offence.

Free products (for example, “buy one get one free”) and coupons

- “Free” products must be that: free. The offer is not free if your business has increased the price of any product the consumer must also buy or added other charges (beyond unavoidable cost, such as the true cost of freight) which may contribute towards the cost of the “free” product.
- If you are issuing coupons to be redeemed against a particular product, ensure that retailers only accept the coupons against that product and are not interchanged with other products.
- Finally never describe a gift (that is, something offered to all or most participants) as a prize.

Sponsorships

Always ensure that you have a sponsorship agreement in place, however small the sponsorship deal.

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Trade promotions

Any promotion or incentive offered to your employees must not conflict with the interests of your business or compromise the employee's ability to give honest advice to the consumer.

Data Protection

Any information collected in the course of a sales promotion must be collected and held in accordance with a GDPR-compliant privacy policy.

If you would like to know more about this topic or our legal services, please contact Mark Williams or Gemma Ritchie on 01323 435900 or email mark.williams@gabyhardwicke.co.uk or gemma.ritchie@gabyhardwicke.co.uk

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