

# AND THE WINNER IS...

Category: Commercial Law, Media and OTT, Privacy Law, Infosec, and POPIA, Technology Law  
written by Lucinda Botes | August 1, 2019



Promotional competitions and prize draws are one of the ways in which businesses increase sales of goods and services, while creating brand awareness among consumers.<sup>[1]</sup> Such competitions can be entered into via television, radio, company websites, newspapers as well as social media platforms. The Consumer Protection Act<sup>[2]</sup> ("CPA") regulates promotional competitions or prize draws in South Africa. Part E of the CPA deals with the rights of consumers to fair and responsible marketing. The aim of this right is to create fair business practices in respect to advertising and selling. Creating fair business practices ensures that real competition between suppliers is made possible, which in turn leads to lower prices and better products for consumers.<sup>[3]</sup>

The CPA defines "promote" as advertising, displaying or offering to supply any goods or services in the ordinary course of business, to all or part of the public for consideration, making any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration or engaging in any conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction.

Section 36 (1)(c) of the CPA defines promoter as "a person who directly or indirectly promotes, sponsors, organises or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organised or conducted".

Section 36 (1)(d) of the CPA defines a promotional competition as "any competition which is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier or the sale of any goods or services where the value of any prize offered under such competition exceeds the monetary threshold prescribed by the Minister". Currently, the monetary threshold is R1.00.<sup>[4]</sup>

Many "influencers" and marketers make use of social media for promotional competitions as they can reach a wide audience in a relatively convenient way. When running these competitions, it is important that the CPA is complied with.

The CPA prescribes that a promoter of a promotional competition must

- formulate competition rules (section 36 (3) (c) (i);
- make the competition rules available to the Commission, any participant on request and without cost (section 36 (3) (c) (ii); and
- retain a copy of the competition rules for three years after the end of the competition (section 36 (3) (c) (iii)).

Along with complying with the CPA, certain social media platforms prescribe their own rules to be followed when creating a promotional competition, for example, YouTube dictates that every promotional competition must have a set of rules which is compliant with its community guidelines, terms of service and privacy rules. The promotional competition must also be free to enter. Section 36 (3) (a) of the CPA provides that the promoter of a promotional competition must not require any consideration to be paid by or on behalf of any participant in the promotional competition, other than the reasonable costs of posting or otherwise transmitting an entry form or device. Further, privacy notices also need to be included which explains how personal data which is collected will be used for the contest.<sup>[5]</sup>

In addition to promotional competitions, the CPA also regulates the offering of trade coupons and similar promotions by suppliers. Section 34 (2) of the CPA defines a “promotional offer” as an offer or promise, expressed in any manner, of any prize, reward, gift, free good or service, price reduction or concession, enhancement of quantity and quality of goods or services, irrespective of whether or not acceptance of the offer is conditional on the offeree entering into any other transaction. A document setting out a promotional offer must set out the nature of the prize, reward, gift, free goods or services, price reduction, concession or enhancement of the quality or quantity of goods or discount or free item being offered.<sup>[6]</sup>

Promoters who do not comply with the CPA and its regulations, may have their competition declared void.<sup>[7]</sup> The Commission has the power to issue a compliance notice where it, on reasonable grounds, believes that the promoter is guilty of engaging in prohibited conduct. Failure to comply with a compliance notice may result in an administrative penalty or may even be prosecuted.

Given the wide definition of a promotional competition and the low value threshold, it is in the best interests of promoters who run promotional competitions on social media to comply with the CPA.

[1] Jacolien Barnard and Tshepiso Scott “An overview of promotional activities in terms of the Consumer Protection Act in South Africa” 2015 (27) SA Mercantile Law Journal. 441 – 477.

[2] Act 68 of 2009.

[3] Wenette Jacons, Phillip N Stoop and Rene van Nierkerk “Fundamental consumer rights under the Consumer Protection Act 68 of 2008: A critical overview and analysis” 2010 (13) Potchefstroom Electronic Law Journal 334.

[4] Regulation 11(4) of the Consumer Protection Act Regulations.

[5] <https://support.google.com/youtube/answer/1620498?hl=en> accessed on 7 June 2019.

[6] Section 34 (4) CPA.

[7] Neil Taylor “Promotional competitions and their requirements under the Consumer Protection Act 2008,” 2011 Polity.