

## Consumers and trade promotion lotteries



NSW Fair Trading investigates complaints about trade promotion lotteries in NSW and takes enforcement action against promoters who do the wrong thing.

The aim of this fact sheet is to help consumers understand how a trade promotion must be legally conducted.

### What is a trade promotion lottery?

A trade promotion lottery is a free-entry lottery conducted to promote goods or services supplied by a business. The most common example is when you buy a particular good or service you are given the chance to enter into the lottery and possibly win a prize. They are often called a competition, contest, sweepstake, or giveaway. They differ from a raffle or art union in that you don't pay for a ticket to enter.

There must be an element of chance in determining who wins a prize in a trade promotion lottery. If the winner is determined on the basis of skill, for example a trivia night or an art competition, then it is not a trade promotion lottery. Another example of a skill based competition would be one including public voting, with the person achieving the highest votes winning a prize.

However, unless judges are used and the winner is adjudged against set criteria, a competition is not based on skill – it is based on chance and therefore is a trade promotion lottery.

Examples of trade promotion lotteries include:

Members badge draws, member swipe machines, joker poker and promotions run by businesses where buying a particular good or service gives you free entry into a competition and the chance to win a prize such as a car or a holiday.

To make sure that everyone who enters is treated equally and no person gets an unfair advantage, the promoters of a trade promotion lottery have a number of legal responsibilities. In NSW, trade promotion lotteries are regulated by NSW Fair Trading to ensure that they are conducted with a high level of integrity and fairness.

### Did you read the terms and conditions?

A promoter must prepare terms and conditions which are the rules that have to be followed by both the promoter and people who want to enter the trade promotion lottery. It is very important that you read the terms and conditions so that you fully understand what is expected of you in order to have a valid entry and so that you can make an informed decision about entering the trade promotion lottery.

The terms and conditions must cover:

- the conditions of entry (such as the minimum age of the participants or that you have to buy a particular product)
- the closing date and time for the receipt of entries in the lottery
- details of the prizes and their value (including conditions, if any, relating to receiving, accepting or using the prizes)
- the time, date and place of the lottery draw
- how prizes will be awarded
- the method for claiming prizes (including any requirement for entrants to be physically present at the draw)
- how prize-winners will be notified
- how the results will be published and
- the promoter's name, address and telephone number.

### Where do I find the terms and conditions?

The terms and conditions must be advertised or available on a website or at a publicly accessible location from the commencement of the trade promotion lottery. If they are not included on all the advertising, the advertisements must specify where the rules can be found and also include any unusual or onerous rules such as if there is a time limit to claim the prize or any restrictions on who can enter.

## How is the draw conducted?

To make sure that the draw to determine prize winners is conducted with the highest degree of integrity, there are a number of requirements that must be followed. This is very important to ensure that every entry has a fair and equal chance of winning. It is essential that all valid entries are included in the draw and that no person receives an unfair advantage or unfair gain over another.

- If more than one prize is offered, the major prize should be the first drawn. Then the other prizes should be drawn in descending order of number and value. If the promoter decides to conduct the draw in another manner, they should make clear in any advertising material the method that will be used to decide the winner. If there are a series of draws with a build up to the major prize, each ticket should be placed into the following draw until all prizes have been allocated.
- If the trade promotion lottery is an instant win game or a scratch & win promotion, the promoter must incorporate in the game structure a second chance draw or a similar method to distribute any unclaimed prizes.
- A trade promotion lottery cannot impose a condition that places some participants at an unfair disadvantage. If there is a condition that requires a participant to be on the premises and physically at the draw in order to claim a prize, they must be allowed at least four minutes to get to the draw location from wherever they are on the premises.

- In any draw where the total value of the prizes is over \$10,000, the draw and the announcement of the prize winner(s) must be scrutinised by an independent person - unless an exemption has been granted by NSW Fair Trading. The scrutiner observes the draw process and decides to the best of that person's knowledge and belief whether all entries to the trade promotion lottery have been treated equally. The draw should be conducted in a place that is accessible to the public as any person may attend the draw if they wish.
- Prizes must be delivered to the prize winners within 6 weeks after the close of the lottery - unless it is clearly stated in the terms and conditions that a longer period applies. Prize winners should be notified of their win within 2 days of the draw. If the prize value is more than \$500, then a public announcement in a newspaper, on a website or on TV or radio must also be made.

## What happens to unclaimed prizes ?

If, despite every reasonable effort, the promoter cannot contact a prize winner, they must retain the prize for 3 months after the draw. At the end of 3 months, if the prize remains unclaimed, the promoter must provide NSW Fair Trading with full details of the steps that they took to contact the winner and deliver the prize. If the steps taken are satisfactory then permission may be given for the promoter to conduct another draw to determine a new winner.

## Special conditions for some trade promotion lotteries

### Phone calls or sms messages

If entry into a trade promotion lottery requires the entrant to make a phone call or send an SMS then the maximum cost of the phone call or SMS must be clearly stated in the terms and conditions and cannot be more than 55 cents (including GST).

### Alcohol

Entry into a trade promotion lottery cannot require the consumption of more than one alcoholic drink, nor can the outcome of a trade promotion lottery be dependent on the consumption of more than one alcoholic drink. A trade promotion cannot award as prizes, alcoholic drinks that have to be consumed on licensed premises. Where alcohol is given as a prize, the amount must not exceed 20 litres (more than two cartons of beer or 24 bottles of wine).

### Two tiered promotions

Where it is likely that a prize will not be awarded because of the nature of the trade promotion lottery, the advertising must include an indication of the odds of winning the prize, for example stating that there is a 1 in 250,000 chance of winning \$1million.

If the trade promotion lottery is of the type that it firstly determines the winner and then uses a subsequent game of chance to determine the prize that that person wins, the advertising must state how the subsequent game will be conducted and the odds of winning the major prize. An example of this type of competition is where a person wins the right to choose one of a number of envelopes containing a variety of prizes and they win the prize in the envelope that they select.

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## **Where prize is drawn at registered club or hotel**

If a trade promotion lottery is conducted on the premises of a registered club or hotel, cash prizes must not be awarded between the hours of 10pm and 8am the following day. A cheque can be awarded but it must be made payable to the winner and can't be cashed by the venue.

## **What if you have a concern?**

If you are concerned that a trade promotion lottery has not been conducted fairly and lawfully in NSW, then you can lodge a complaint with NSW Fair Trading, by completing a complaint form online or by calling 13 32 20.