

SOUTH AFRICA

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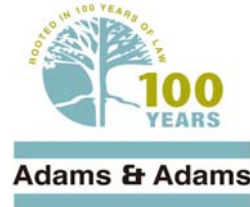
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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

Both the National Lotteries Act 57 of 1997 as well as the Advertising Standards Authority's Code of Advertising Practice regulates advertising as well as promotional incentives. As far as consumer protection is concerned, the Consumer Affairs (Unfair Business Practices) Act 71 of 1988 deals specifically with consumer protection.

According to Clause 4.4 of Section II of the ASA Code "products should not be described as 'free' where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are paid by the consumer, a clear statement if this is the case should be made in the advertisement".

Clause 4.4.2 goes on to say that "where a claim is made that, if one product is purchased, another product will be provided 'free', the advertiser should be able to show that he will not be able immediately and directly to recover the cost of supplying the 'free' product whether in whole or in part".

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

Competitions are generally governed by Clause 8 of Section II of the ASA Code. Promotion and advertising in the healthcare sector is governed by The Medicines and Related Substances Control Act 101 of 1965. Promotion and advertising of alcohol is regulated by The Liquor Act 59 of 2003. Advertising and promotion of cosmetics is regulated by The South African Bureau of Standards and Department of Trade and Industry, in cooperation with the Cosmetic Toiletry and Fragrance Association. All of these are also governed, in parallel, by the ASA's Code of Advertising Practice.

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

Self-regulation and government or legislative regulation run concurrently. Self-regulation has been found to be an effective tool, especially in terms of speed, enforcement and cost reduction.

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

There may be tax consequences for the recipients, but not for the advertiser.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

Not to our knowledge.