

UNITED STATES

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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?

Various federal and state laws regulate sweepstakes (games of chance) and contests (games of skill) by requiring that they contain only two of the following three elements (prize, chance or consideration) to avoid qualifying as a lottery. Lotteries are prohibited on both the federal and state level (excluding state run lotteries which are permissible). The Federal Trade Commission (FTC) regulates the use of rebates and use of the phrase "free" in advertising. However, rebates and free gifts or products do not play a role in sweepstakes or contests because they would require the purchase of a product which is forbidden in these types of promotions.

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.

The advertising and promotion of food to children as well as dietary supplements and weight loss products in general are currently topics of great interest to the FTC. Section 5 of the Federal Trade Commission Act which states, *'unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce are unlawful'*, gives the FTC broad regulation powers over advertising and promotions including incentives to ensure that any message created for commercial purpose be truthful and not deceptive.

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

The National Advertising Division (NAD) and Children's Advertising Review Unit of the Council of Better Business Bureaus (CARU) which were created in an alliance with the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA), and the American Advertising Federation (AAF) are effective at supplementing government and legislative regulation of advertising and promotion activities.

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)?

To prevent conflicts of interest and encourage ethical behavior, most states have a public officers law which forbids a public officer or employee to accept any gift or incentive of more than a nominal value under circumstances in which it could be inferred that the gift was intended to influence or reward the recipient for performing official duties.

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)?

For public officers or employees, incentives or gifts made to such individuals are generally forbidden. When a joint venture exists between businesses, the public should be made aware of such a relationship before being asked to purchase a product from either business so that the marketing of the joint venture is not considered a deceptive or unfair practice under FTC's regulations.

