LAUNCHING COMPETITIONS TO ATTRACT CUSTOMERS – WHAT THE CPA SAYS

If you are in any way involved with the running, promoting or sponsoring of a promotional competition, you are 'a promoter' for purposes of the Consumer Protection Act. This means that you must comply with the Act's requirements relating to information to be furnished to participants, the detail to be included in the competition rules and the storing of information and documentation after the competition has been finalised. Find out what is required in order to be compliant and avoid incurring the penalties for non-compliance.

Who/What is 'a promoter'?
When a person or company is involved with the running, promoting or sponsoring of a promotional competition, that person/company falls within the definition of 'a promoter' for purposes of the Consumer Protection Act ('CPA'). The specific wording of section 35 of the Act is far reaching, as it determines that a promoter is 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.

When is an activity a 'promotional competition'?
According to the definition in the CPA, a 'promotional competition' is any competition, game, scheme, arrangement, system, plan or device for distributing prizes by chance and where:

- it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and
- any prize offered exceeds R1.

Note that a promotional competition remains just that, whether or not a participant is required to demonstrate any skill or ability before being awarded a prize.

Requirements
A person conducting a competition needs to know, amongst other things, that:

- the competition rules must be prepared before the beginning of the competition;
- the rules must be made available to the Commission and to any participant for free, should this be requested; and
- the competition rules must be retained for 3 years after the end of the competition.

In addition, a promoter must give each participant an offer to participate (such as an entry
form) which must contain information as to:

- the benefit or competition to which the competition relates;
- the steps to follow to enter/participate in the competition;
- how the results of the competition will be determined;
- what the closing date for the competition is;
- how the results of the competition will be made known; and
- how and where a person may obtain a copy of the competition rules and/or collect prizes.

Where entry to the competition is gained by sending an sms, the price of such sms may not cost more than R1,50;

A prize winner must, in addition, be given the opportunity to refuse:

- that his photograph be used;
- to be involved in any marketing of the promoter of the competition; or
- to be present when the draw takes place

failing which the competition is null and void!

**Supervision of competition**

The CPA stipulates that competitions must be conducted under the supervision of a chartered accountant, registered auditor, admitted attorney or advocate and must be reported on through the competition promoter’s internal audit reporting.

For assistance to legally manage your promotional competition from start to finish by drafting the necessary documents and attending to the obligatory supervision, contact Cris Riego De Dios at crisrdd@stbb.co.za.