When keeping your fingers crossed is not enough!

A brief review of European Marketing legislation and compliance requirements.

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Covering all the bases

- Financial compliance ✓
- Regulatory compliance ✓
- Human Resources compliance ✓
- Ethical compliance ✓
- Data protection compliance ✓
- Promotional compliance ?
The Aim of this session

• To make you aware that there are laws, Codes and promotional issues that affect your company’s marketing activities
• To protect your reputation
• To help you know when to seek further advice
Who are PromoVeritas?

The global independent promotional verification and compliance service

• Operating over 12 years
• UK based but global reach
• Wide range of clients and brands around the world

Who are PromoVeritas?

• Unique combination of in-house legal and marketing experience supported by specialist local law firms in over 45 countries
• £5m global indemnity cover

What PromoVeritas do

Pre-promotion
• Advice on techniques & rewards
• Legal & Compliance reviews
• Drafting of Terms & Conditions
• Reviews of marketing materials
• Systems Reviews – software / sites
What PromoVeritas do

Post-promotion
- Judge Competitions
- Conduct Prize Draws
- Winner Management
- Problem solving

Why Should You Bother?
- Creativity must be linked to legality
- Otherwise risk of serious legal and reputational damage
- THE BUCK STOPS WITH YOU

Why run promotions?
- To ‘engage’ with consumers
- To attract new consumers or retain loyalty of existing users
- Build up a database
- Gain the interest of the trade
- Support a Sponsorship deal
- ‘Because everyone else does it’
What are the main types of promotion

- **Prize Draw – aka Sweepstake**
  - Game of chance – winners picked at random
  - Can be free to enter or linked to purchase, eg via a unique code
  - Seen by some to be allied to gambling

- **Competitions**
  - Game of skill or judgement eg enter a poem or a photo
  - All entries need to be judged. Best will win.
  - Can be free to enter or linked to purchase, eg via a unique code

- **Instant Wins – Willy Wonka style**
  - Find a special token or a unique code or similar
  - Can be free to enter or linked to purchase, eg via a unique code
  - Seen by some to be allied to gambling
What are the main types of promotion

- Collector scheme –
  - Collect packs or tokens to claim a gift often free or at a special price

What are the main types of promotion

- Gift with Purchase
  - Buy a notebook and get a free pen worth £X
  - Always linked to purchase

Where do you run these promotions?

- In print Media
- In Social Media
- On the internet via your website
- On Pack
- Off pack
The Legal Framework

- There is no single unified approach to laws on the running of promotions across Europe
- EU Unfair Commercial Practices Directive
- Different countries have taken totally different approaches

The Legal Framework

- National Law
- EU Law – UCPD / CPR
- Internal Social Media – Twitter/Facebook
- St. John’s Self-Regulatory bodies
- Alcohol rules
- Internal Social Media – Twitter/Facebook
- National Law
- EU Law – UCPD / CPR

EU Unfair Commercial Practices Directive

- To be applied as national law across all of EU since May 2008

- Marketing practices are banned outright
- Punishments include 2 years in jail and heavy fines
- General marketing law but need to consider local application and enforcement policies
Unfair Commercial Practices Directive

- Ban on misleading consumers
- PLUS a ban on “significant omissions”
  
  Not only what you say,
  but what you do not say

Unfair Commercial Practices Directive

- Offering products at a specified price then refusing to take orders or deliver them in a reasonable time

- And/or having intention of upselling consumer to a different product

Unfair Commercial Practices Directive

- National Press Ads
  ‘Half Price 4Gb at Argos...’

- Small print: ‘Offers may not be available in all stores. Limited availability...’
- A Reader challenged availability and the UK’s Advertising Regulator (ASA) investigated
Unfair Commercial Practices Directive

- Sales were 600-1200% above estimate.
- ASA noted the small print, but "because each store had on average...
- *Only one or two 4GB drives, we considered the small print was not sufficient to warn consumer of the very limited nature of the offer."

Unfair Commercial Practices Directive

- And "because Argos had not made a reasonable estimate of demand AND the ad did not make clear the limited stock, the ad was misleading."
- Implications: Ensure that you properly forecast stock uplifts

Unfair Commercial Practices Directive

- Falsely claiming products available for “Limited Time Only” - deprives consumer of the time to make an informed choice
- Implications: Ensure that limited offers are just that
Unfair Commercial Practices Directive

• Using editorial that has been paid for without making this clear

• Implications: Label advertorials carefully
Unfair Commercial Practices Directive

- Claiming to offer a competition or prize promotion without awarding the prizes described or reasonable equivalent

- Implications: Deliver what you say

Case Study: Red Bull

- High profile competition offering a VIP Trip to the Belgian Grand Prix
- Thousands of entries
- Two lucky winners — who complained!
Red Bull – How NOT to do it!

• The UK’s Advertising Regulator did not like it
• “information relating to the different locations of the event, airport and hotel, and that travel to and from them was not included, was significant information likely to influence consumers’ understanding of the promotion and should therefore have been stated clearly in the promotional material.”

Red Bull – How NOT to do it!

• “the term “VIP”, was likely to be understood by readers as exclusive, ...and not... for the flights to be with a budget airline......and that, given that the Grand Prix issued tickets that included admission to a VIP area, readers would expect the winning tickets to include this.”
Unfair Commercial Practices Directive

20. Restrictions on the use of ‘FREE’

- **FREE**
- **FREE**
- **FREE**
- **FREE**
- **FREE**

Unfair Commercial Practices Directive

20. Can only use ‘FREE’ if:

- The only cost to consumer is **exact** cost of actual postage
- So you cannot say – ‘FREE Toy – send £1 Post & Packing’
- Just the actual cost of the stamp to get it to the consumer and no more

SUMMARY of the Unfair Commercial Practices Directive

- **DO ensure** that the consumer knows that they are being marketed to
- **DO NOT** pull the wool over their eyes
Basics of Promotional Law

• UCPD was general marketing law across EU

• But when it comes to specifics on promotions, every country is different
Problem Countries - ITALY

- Regulate all Prize Draws, Instant Wins, Comps
- Must be notified to authorities – min 15 days in advance
- Must pay fees & buy an insurance bond – in event you go bust before issuing a prize
- Must involve a Public Official in winner selection – draw or judging

Problem Countries - ITALY

- All prizes must be awarded – unclaimed prizes go to charity
- Do not like cross border promotions – all prizes must be awarded to Italians!
- 40% tax on prizes
- All data must be collected in Italy – this rules out facebook and instagram etc
- Cost of registration is approx $4000
Problem Countries - Spain

- Regulate all games of chance
- 10 x local Lottery boards
- 1 x National Lottery board
- Costs are about £1,000+
- Taxes of 10% on prizes
- Competitions and cross border are fine

Problem Countries - Portugal

- Regulate all games of chance linked to purchase
- Require registration
- Taxes of 20%+ on prizes
- Do not like cross border promotions

Problem Countries - France

- Increasingly liberal
- But entrants must be able to enter for free – and in case of internet promotions reclaim the cost of internet usage or postage upon request
Problem Countries - Sweden

- All games of chance are banned
- Whether linked to purchase or free
- Games of skill are fine

Problem Countries - Russia

- New laws require registration of all prize draws
- Plus 35% tax on prizes over $100
- Competitions seem to be okay

Problem Countries - Ireland

- Games of chance linked to a purchase banned
- UNLESS operated by a charity
- Competitions are fine
- However there appears no appetite for prosecutions as the authorities that it is against the UCPD
HOW CAN WE AVOID PROBLEMS?

• **1. SOLUS BUT UNIFIED**
  – Same creative idea across several countries
  – Creates brand synergy
  – but each country has *separate* terms & conditions and will require a *separate* prize fund
  – Mechanics are likely to vary, but fine to make legal but will be expensive in terms of both legal costs and prize costs

1. SOLUS

Country 1

Country 2

Country 3

Country 4

Country 5

HOW CAN WE AVOID PROBLEMS?

• **2. CLUSTERS**
  – Combine countries that have similar legal regimes and create clusters
  – Countries within a cluster share terms and prize funds
  – fits around the need to reflect national laws
  – but helps to control costs and maintain brand image
HOW CAN WE AVOID PROBLEMS?

• 3. THE CLOUD
  – Ignore individual national laws of individual countries
  – "we are operating on the internet, above your country, and your law does not apply to us. Anyway we are not actually appealing to your residents anyway!"
  – Highly cost effective and fast to implement
HOW CAN WE AVOID PROBLEMS?

• THE CLOUD – some limitations
  – There can be NO marketing ‘on the ground’ in ‘problem’ countries otherwise we will be seen to be marketing to their residents
  – Broad, non-country specific media, eg web and social media is fine

HOW CAN WE AVOID PROBLEMS?

• THE CLOUD – some limitations
  – Cannot directly target residents of certain countries or mentioned residents of any particular country,
  – so tends to be ‘open to the world’
  – And winner could come from anywhere!
  – Use ‘Void where local laws prohibit entry’ to push responsibility back to the individual

DECIDING THE BEST OPTION

1. How risk averse is your client
2. How soon do you want to run the campaign
3. What is the nature & value of the prizes
4. Are there plans for marketing in each country
5. How big are your budgets – legal & prize
OTHER THINGS TO REMEMBER

• Make sure all systems are secure –
  – Big prize attract fraudsters
  – Both internal & external

OTHER THINGS TO REMEMBER

• Avoid online Voting mechanics – disastrous
• Monitor entry activity – look for odd patterns or recurring entries

• Make sure winner selection is totally fair –
  draws should be conducted independently and competitions should have an independent judge

OTHER THINGS TO REMEMBER

• Trade promotions could fall foul of anti-corruption or Bribery laws – take care

• Be prepared for the unexpected
OTHER THINGS TO REMEMBER

• Just because you can run globally, does not mean you should!
• Consumers are not stupid – one prize available globally is not likely to achieve results
• Trade promotions could fall foul of anti-corruption or Bribery laws – take care
• Be prepared for the unexpected

Case Study

• Pringles Music Download
• Buy a can
• See inside for a unique code
• Enter the code on a website and claim a free music download of your choice

Case Study

• Pringles Music Download
• To be run in 24 countries from Armenia to UAE
Case Study

- **Pringles Music Download**
  - We created six Clusters and ensured full legal compliance in each Cluster
  - There were cluster specific terms & conditions plus translations and registrations, eg in all seven UAE Emirates, Yemen & Saudi Arabia, where authorities had concerns over some of the tracks on offer!

Case Study

- **HTC Champions League**
  - As sponsors, they wanted to run activity in all 16 participating countries.
  - Trade and Consumer
  - We provided full compliance plus implementation and winner management for all countries

Case Study

- Including Judging a photo competition:
Social Media Promotions

- Over 1.3 billion Facebook users (Q1 2014)
- Over 255m monthly active Twitter users
- A fast growing medium for marketers
- Seen as low cost and high impact

Challenges with Social Media

- Vote manipulation:
  - canvassing or buying of votes, (called 'vote farming' or 'click farms')
  - hacking
  - collectives of users blocking access to the activity

Did Luisa Zissman rig online vote to win reality TV best female personality prize? Apprentice star 'paid web company to send thousands of fake entries'

- Apprentice star won a National Reality TV Award in September last year
- But now Miss Zissman, Luka Tovia, and Mark Hughes - the creators of the web company - admit they used software to rig the vote
- It is not clear how they approached this fake entry
- Miss Zissman has been accused of attempting to influence the vote
Challenges with Social Media

- Inappropriate comments and entries
- Rapid communication of problems

Allowing the public to enter content!

- Dude, I used to work at McDonald's. The #McDStories I could tell would raise your hair. (via Twitter)
- Once time I walked into McDonald and I could smell Type 2 diabetes floating in the air and I threw up. #McDStories (via Twitter)
- These #McDStories never get old. Kinda like a box of McDonald’s 10 piece Chicken McNuggets left in the sun for a week (via the LA Times)
- The promoted TT of #McDStories isn't going the direction I think @mcdonalds wanted it to go. Lots of weed stories and heart attack jokes. (via Field Content)
- Ate a McFish and vomited an hour later....The last time I got McDonald was seriously 16 years ago in college.... #McDStories (via Twitter)
- #McDStories I lost guts in 6 months after I quit working and eating at McDonald’s (via The Daily Mail)

Facebook Promotions

- Facebook has their own set of rules
- You must follow these rules or...risk complaints and removal of content
Facebook Promotions

- You must have clear terms and conditions
- You must have a clear Privacy and Data Policy
- You must distance yourself from Facebook

  “This promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook. You understand that you are providing your information to [recipient(s) of information] and not to Facebook. The information you provide will only be used for [disclose any way that you plan to use the user's information].”

Facebook Promotions

- Anyone over 13 can have a Facebook account

- Restricting entry to over 18’s is best as it is the legal age of obligation in the UK – the age in which you can legally enforce a contract

Facebook Promotions

- You cannot collect entries simply by asking people to ‘Like’ your page:
  - They need to do more than just ‘Like’

- Plus you cannot:
  - Notify winners through their own Facebook page, it is too public
  - Ask people to share a page on their own Timeline as a means of entry
  - Ask people to tag themselves in a photo in order to enter - too many fake it
Twitter Promotions

You must:
• Have appropriate terms & conditions – usually via a second tweet.
• Best to use a tiny URL as a link to a regular website
• Use a unique #reply to ensure you can pull off names of entrants

Twitter Promotions

• You must be aware those with ‘private’ settings will not see your winners’ notification
• You must not:
  • promote abusive tweets or aggressively follow or un-follow people
  • promote multiple repeat tweeting or the use of multiple accounts
• Take care when using celebrities:
  • use #ad or #spon for sponsored/commercial tweets

The Final Word

• Marketers do not want to hear the word ‘NO’
• By asking the right people you will be able to find a solution to your problems and be able to say ‘YES’.
Contact Us……
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• Any man can make mistakes, but only an idiot persists in his errors

• Marcus Tullius – Roman Statesman
• I will do slides 1 to 22
• You will do 23 Legal Framework and all of the CPR slides to slide 42
• I will then do 43, European law to 63
• And then you come back in 64 with Other things to Remember, up to 67
• I will then do the case studies 68 to the end 85 and you can do the last slide 86
• Hope that this works for you