

# *Dimitrov, Petrov & Co.*

BULGARIAN LAW FIRM

## **Partners:**

George Dimitrov  
Bogdan Petrov  
Alexander Todorov  
Metodi Baykushev  
Zoya Todorova  
Hristo Nihrizov  
Plamena Georgieva  
Boyana Milcheva

## **Associates:**

Desislava Krusteva  
Dimitar Karabelov  
Sylvina Beleva  
Encho Simeonov  
Donka Stoyanova  
Emil Tumbev  
Boyan Ivanov  
Nikoleta Stoyanova  
Pavlina Ivanova  
Bilyana Stefanova  
Tsvetelina  
Georgieva  
Albena Angelova  
Gergana Georgieva  
Pencho Stanchev

## **The offering of bonuses and prizes in promotional campaigns and their compliance with the rules of fair competition**

Any participant in the market aims at soliciting clients. Holding promotional campaigns where consumers are offered certain bonuses and prizes bound with the purchase of a particular product is a common business practice. Promotions are one of the main methods for advertising and marketing of the commodities and services offered by a company.

At the same time, however, promotions have positive influence on the market only if held in accordance with certain rules of fair market conduct. The Bulgarian Competition Protection Act (CPA) provides such rules and the latter should be taken into account by any company planning to organize a promotion, which involves offering of bonuses and prizes to clients.

The underlying provisions of CPA aim at providing a fair competitive environment by preventing deviations in the conduct of clients, where they decide to buy certain commodity only because of the bonus or prize they are going to get and not because of the qualities of the commodity itself. Otherwise, the interests of the competitive companies offering commodities or services with similar or analogical qualities may be affected. In the case of interchangeable commodities the offering of a bonus would motivate the consumer to choose one product over another driven only by the desire to receive the free product without accounting for the quality characteristics of the main (purchased) product. Therefore, such behaviour is considered to be using of non-market mechanisms in offering of commodities or services, which is why it is inconsistent with the fair competition.

The regulations of CPA restricting the holding of the above mentioned promotions are part of the prohibition on unfair solicitation of clients regulated in Art. 36 of CPA and in particular in Para. 2 and 3 of the specified provision.

### **1. Offering of bonuses and prizes**

The provision of Art. 36, Para. 2 of CPA **prohibits the offering or giving of a bonus** to a commodity or service sold free of charge or at an ostensible price of another commodity or service, **with the exception of:** advertising items of minor value and bearing a clear indication of the advertising undertaking; items or services which according to commercial usage are an attribute to the commodities sold or services provided; goods or services as a rebate for sales in higher quantities.

Sofia 1303, Bulgaria  
28 Todor Alexandrov Blvd,  
fl. 7  
tel.: +359 2 421 42 01  
fax: +359 2 421 42 02  
e-mail: [mail@dpc.bg](mailto:mail@dpc.bg)

Varna 9000, Bulgaria  
7 Krastyu Mirski Str,  
fl. 3,

office 9  
tel.: +359 52 912 986  
fax: +359 52 912 987  
e-mail: [varna@dpc.bg](mailto:varna@dpc.bg)

website: <http://www.dpc.bg>

It is evident that the **offering or giving of a commodity or service as a gift or at a symbolic price when purchasing another product is prohibited**. The mere offering of a bonus is sufficient and therefore it is irrelevant whether the clients will decide to avail themselves of the offer or not. The introduced prohibition aims at avoiding manipulation of consumer demand in cases where the client prefers certain product only because of the free bonus to it.

However, proceeding from the assumption that the bonus shall be of nature or value sufficient to solicit consumers, as well as considering the fact that promotions are among the basic methods for advertising, the legislator exhaustively specifies several exceptions allowing the merchant to offer free bonuses to the purchase and these are the cases where:

- (a) advertising items of minor value and bearing a clear indication of the advertising undertaking are offered;
- (b) the offered items/services according to commercial usage are an attribute to the commodities sold or services provided; or
- (c) commodities or services are offered as a rebate for sales in higher quantities.

In this regard, it should be noted that in two of its decisions the Commission for Protection of Competition (CPC) has outlined some criteria for objectively assessing the presence of the exceptions specified above.

Firstly, in its decision No. 55 from January 29, 2009 the CPC has addressed the issue regarding the cost range of the advertising items within which they may be offered as gifts in accordance with the exception under item a) above. Pursuant to the decision **‘the advertising item is of minor value when its value does not exceed 10 percent of the price of the basic commodity or service sold’**. With respect to the second criteria the CPC adopts that ‘advertising items’ are any objects that may be branded with the name of the company, its trademark or logo with the purpose of advertising.

Secondly, with respect to the exception under item c) above, in its decision No. 1435, dated November 11, 2010, the CPC adopts that when purchasing commodities or services in higher quantities, **it is inadmissible to offer as a rebate commodities or services different from those being sold** (i.e. the rebate in kind when purchasing higher quantities of certain commodity should be of the same type of commodity as the purchased one).

With a view to the above, each particular promotion should be subject to analysis as to what extent it falls within the range of the exceptions specified above, which in its turn would substantiate the lawfulness of the promotion. Such an analysis will be always based on the specific circumstances of the promotion, the characteristics, the purpose and cost of the commodities being

sold and the bonuses, which is why no definitive parameters for assessment can be provided in advance. In all cases the practice of CPC should be taken into account when implementing the provision in question of CPA.

## **2. Promising of prizes**

In its turn Art. 36, Para. 3 of CPA contains a prohibition on carrying out a sale, where something is offered or promised alongside, and the obtaining thereof depends on: solving problems, puzzles, questions, riddles; collecting series of coupons and the like; organizing games with cash or other prizes, whose value significantly exceeds the price of the commodity or service being sold.

Organizing games with prizes is a frequently used advertising strategy as far as it is attractive and can easily draw client's attention. However, that is why the offering of a prize is often a prerequisite for distortion in consumer demand, since the consumer might be tempted by the possibility to obtain a prize of significant amount without putting in any extra effort and money. Therefore, by virtue of the provision at issue, the actions of the undertakings are sanctioned, when they use non-market mechanisms to motivate the consumer in the process of making a decision whether to buy a certain item or not. As a non-market means for soliciting clients shall be deemed the provision of prizes of significant value, distracting consumers' attention from the quality and price of the offered product, and placing the remaining participants in the relevant market in an unequal position as competitors.

As regards the promising of a prize, to qualify the conduct of a certain undertaking as unfair, three prerequisites should be present simultaneously pursuant to Art. 36, Para. 3 of CPA: (a) sale of a commodity; (b) organizing of a game with a material prize relating to the sale; (c) significantly higher value of the prize as compared to that of the sold product/service, whose purchase is bound with participation in the promotional game.

Similarly to the above, in their practice the CPC and the Supreme Administrative Court (SAC) have had quite a few occasions to consider the conduct of traders in offering prizes in connection with its compliance with Art. 36, Para. 3 of CPA and this practice should again be taken into account in the assessment of any promotional game. For instance, in connection with the possibility to include a condition that the participation in the promotional game is not bound with the purchase of a commodity, the CPC and SAC adopt that if the provided alternative means of participation is feasible under additional requirements, which most of the consumers could not fulfil, virtually the participation in the drawing is conditioned by the purchase of the commodity and the prohibition applies without exception.

With regard to the assessment whether the promised prize is of value significantly exceeding the price of the purchased commodity, the CPC with Decision No. 55 dated January 29, 2009 again introduces objective criteria depending on the correlation between the value of the purchased commodity or service and the offered prize. Thus the CPC adopts that **within the meaning of Art. 36, Para. 3 of CPA the promised prize is of value significantly exceeding the price of the sold commodity or service if it exceeds by more than 100 times the price of the offered commodity or by more than 15 times the minimum work salary for the country.** According to the consistent practice of the CPC and SAC on the application of the specified criteria, the correlation between them is as follows: as a rule the correlation of the price of the purchased product to the price of the prize applies (the prize should not be 100 times more expensive than the purchased commodity) and only if the value thus determined exceeds the value of the relevant number of minimum work salaries, the second restriction applies (the price should not exceed the amount of 15 times the minimum work salary for the country).

It should be taken into account that the specific value of the prize, which is to be correlated to the criteria specified above, should be the market value of the prize that any independent market participant would be willing to pay.

To qualify certain promotion as a violation of the above cited provisions of CPA, no actual damage to the interest of the competitors needs to be proven, as it is sufficient to establish the existence of such purpose.

In conclusion, when building their advertising strategy, companies should bear in mind the restrictions considered above and subject to preliminary analysis the intended promotional activities with a view to their compliance with fair commercial practices and the provisions of CPA with regard to unfair solicitation of clients, as well as with a view to the prohibitions on misleading and comparative advertising, imitation, and the like. In this way possible disputes with competitors may be avoided with reference to the manner of promoting the products of the respective company.

## **Contacts**

### **Zoya Todorova**

Dimitrov. Petrov & Co. Law Firm  
28 Todor Alexandrov Blvd., fl.7  
1303 Sofia, Bulgaria  
Tel.: +359 2 421 42 01  
Fax: +359 2 421 42 02  
Email: [zoya.todorova@dpc.bg](mailto:zoya.todorova@dpc.bg)  
Website: <http://www.dpc.bg>

