

GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. R.672

16 May 2003

REGULATIONS REGARDING PROMOTIONAL COMPETITIONS, 2003

I, Alexander. Erwin, Minister of Trade and Industry do hereby promulgate the regulations on Promotional Competitions of the Lotteries Act, 1997 (No. 57 of 1997), as contained in the Schedule hereto .

A. ERWIN

Minister of Trade and Industry

SCHEDULE

Definitions

1. In these regulations, unless the context indicates otherwise, any word or expression defined in the Act has the meaning given to it therein and –

"advertising material" excludes material, which refers to a promotional competition printed or displayed on any individual item of the goods promoted by that competition and which are for sale to the public;

"goods or services " means goods or services which are ordinarily manufactured, sold, supplied, distributed or delivered or in any other way form a substantial part of the business of the promoter involved in a particular promotional competition in the calendar year during which that promotional competition is held ;

"promoter" means a person who holds, conducts, promotes, organizes or is in any other way directly associated with the management or execution of a promotional competition; and

"the Act" means the Lotteries Act, 1997 (Act No. 57 of 1997).

Minimum age of participants

2. (1) A promoter may not offer or award to a person under a particular age, a prize or benefit comprising or consisting of or involving goods or services which in terms of a law, code of conduct or ethics, agreement or rule may not –

- (a) be sold or supplied to;
- (b) be used by; or
- (c) in any other way benefit,

a person under that age.

(2) Advertising material in respect of a promotional competition or which offers or awards goods or services contemplated in subregulation (1) must not be directed at persons under the age contemplated in subregulation (1) in respect of those goods or services.

Nature of prizes

3. (1) A promoter may not offer or award goods, services or benefits as prizes to a participant in a promotional competition –

- (a) in respect of which the sale, possession, use, distribution, rendering or delivery is unlawful ;
- (b) which are substantially similar to goods, services or benefits offered or awarded as prizes in a competition, game or sports pool conducted by or on behalf of the National Lottery during the period in which that promotional competition is being held;
- (c) in respect of which the possession, use, rendering, distribution or delivery is dependent on the payment of a fee or any consideration to any person in order to fully possess or use the prize ;
- (d) in respect of which any licence, approval, endorsement, sanction, consent, agreement or any form of authorisation by-
 - (i) any organ of state ;
 - (ii) a person's legal guardian; or
 - (iii) any other person,

is required for the lawful possession or use of those goods, services or benefits; or

- (e) if, subject to subregulation (2) the winner of the prize is expected or obliged to endorse, promote or advertise the goods or services of the promoter, unless that winner after being publicly announced as a winner of the promotional competition is informed of such in writing and in writing consents to endorse, promote or advertise the goods or services of the promoter.

(2) If the winner referred to in subregulation (1) (e) is a person under the age of 18 years, any consent given by that person is not sufficient without the written consent of that person's legal guardian.

Advertising material

4. The rules of a promotional competition relating to the manner and date of announcing the winners of the competition must be published in 'advertising' material promoting that competition.

Prohibited participation

5. (1) A person who is—

- (a) a director, member, partner, employee or agent of or consultant to a promoter; or
- (b) a spouse, life partner, parent, child, brother, sister, business partner or associate of a person contemplated in paragraph (a),

may not participate in a promotional competition held by that promoter.

(2) Any advertising material in respect of a promotional competition must in legible type alert prospective participants in that competition to the prohibition referred to in subregulation (1).

Inspection

6. (1) Any member of the board or any person designated by the chairperson or acting chairperson of the board in writing for this purpose may, for purposes of monitoring compliance with the Act or these regulations, and on the authority of a warrant issued under subregulation (2), enter any premises and may—

- (a) inspect or search those premises;
- (b) examine any object found in or upon those premises;
- (c) examine or make copies of or take extracts from any book or document found on those premises; and
- (d) seize that book, document or any object, if he or she wishes to retain it for safe custody or for further examination, and if it appears to provide proof of non-compliance with the Act.

(2) A warrant referred to in subregulation (1) must be issued by a judge of the High Court or a magistrate who has jurisdiction in the area where the premises are situated, if it appears to the judge or magistrate from information under oath or affirmation that there are reasonable grounds for believing that—

- a) an exercise of a power referred to in subregulation (1) is necessary for the purpose of appropriate and applicable law enforcement in terms of the Act or these regulations and
- (b) an object, book or document relating to such law enforcement is likely to be upon or in such premises.

(3) A warrant referred to in subregulation (1)

- (a) must specify which of the acts mentioned in subregulation (1) may be performed thereunder by the person to whom it is issued;
- (b) must be executed by day unless the person who issued it authorizes the execution thereof by night at times which in the circumstances are reasonable;
- (c) may be issued on any day and shall be in force until—
 - (i) it has been executed
 - (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
 - (iii) the expiry of seven days from the date of its issue.

(4) Any person who acts on the authority of a warrant referred to in subregulation (1)—

- (a) must, subject to subregulation (5), immediately before commencing with the execution—
 - (i) audibly demand admission to the premises from the person who appears to be in control of the premises;
 - (ii) identify himself or herself to the person who appears to be in control of the premises, if such person is present, and hand to such person a copy of the warrant, or, if such person is not present, affix such copy in a prominent place on the premises; and
 - (iii) if such person is present, state the purpose for which he or she seeks entry;
- (b) may subject to subregulation (3) (a), use such force as may be reasonably necessary, including the breaking of any door, window or other barrier—
 - (i) to overcome any resistance against the entry and search; or
 - (ii) if no person replies to the demand contemplated in paragraph (a) (i), in order to gain entry to the premises.

(5) Subregulation (4) (a) is not applicable if the person acting on the authority of that warrant has reasonable grounds to believe that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if subregulation (4) (a) is first complied with.

(6) A person from whose possession or control a book or document has been removed under this regulation may make copies therefrom at any reasonable time, at his or her own expense and under the supervision of a member of the board or the person so designated.

Offences and penalties

7. (1) A promoter who contravenes regulation 2, 3, 4 or 5 is guilty of an offence .

(2) A person who knowingly in contravening of regulation 5 participates in a promotional competition is guilty of an offence

(3) A person who hinders, obstructs or otherwise prevents any person who acts on the authority of a warrant issued in terms of regulation 6 from exercising his or her powers or from performing his or her duties authorized by that warrant, is guilty of an offence.

(4) Any person convicted of an offence in terms of this regulation is liable to a fine or to imprisonment or to both a fine and imprisonment .

Exclusions

8. These regulations do not apply in respect of any operation authorized by the license contemplated in section. 13 (1) of the Act or by section 13 (1) (j) of the National Gambling Act, 1996 (Act No. 33 of 1996).

Commencement

9. These regulations shall come into effect on the date of publication.