

# "And the winner is..." Are your promotional competitions up to skill or chance?

 By Leigh Andrews

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The question posed in this article's subject is an important one as there are different advertising law regulations to consider if your promotional competition is run as a 'luck of the draw' as opposed to a skilled contest - best you heed them or you could face hefty fines.

At the inaugural Global Advertising Lawyers Alliance (GALA) event to be held in SA, Dr Danie Strachan – partner with GALA host Adams & Adams Pretoria, spoke of the difficulties of navigating the pitfalls of promotional competitions in South Africa. For example, did you know that the National Lotteries Board was established in terms of the Lotteries Act (No 57 of 1997) to not only regulate the National Lottery but also other lotteries, including society lotteries to raise funds, and promotional competitions? I've unpacked the most pertinent points of the presentation below...



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Strachan began with a brief overview of consumer promos' rich history, stating that while competitions are still regarded as a form of gambling in many countries, the first ones date back to the renaissance. Customers wrote out their details and placed them in urns back in the 1500s. The shopkeeper would then select a random winner as a way to get rid of old stock. While the winning stakes have been upped since then, the fact that competitions have been around for so long means they definitely have value for marketers and the law concerning them has developed considerably, especially over the past 100 years.

If you're running a competition today, whether through traditional media platforms, flyers that you leave on windscreens in a car park or a planned social media post, the biggest question to ask is whether the outcome of the competition will be regulated by skill or by luck.

## Luck of the draw

If it's a lucky draw you're running, where the outcome is up to chance, like in a raffle or sweepstakes contest, you need to state this in the competition rules and update or prepare them from scratch for each competition. Be careful with the wording – go for 'stand a chance to win' as opposed to promising that all entrants will receive the prize (for example: "SMS your details to win this car"). You'll need to include all the prescribed information such as specific entry and closing dates. You also need the promotion to be attractive enough to promote the sale of goods, not to make additional money for the

promoter. Note that the maximum cost of entry is [still capped at R1.50](#), whether that's through text or otherwise, and you can't inflate the cost of the prize to cover this.

The draw itself must then be done by an independent auditor, and you need to keep the auditors' reports and affidavits after the competition. You can't force the winner to have their photo published, either.

## The skill of choosing the best competition entry

When the prize on offer is along the lines of winning a holiday or getting entrants to create and submit a crazy stunt video, it's called a skill contest. While these aren't formally regulated they do still count as a form of advertising so must comply with both the Advertising Standards Authority (ASA) and the Consumer Protection Act (CPA) in terms of basic information required. Strachan says to also deal with intellectual property or IP rights of entrants: You need to state upfront that they transfer their rights if their jingle composition wins.



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You'll also need to manage the judging process carefully, particularly if you ask entrants to submit their best photo weekly via tweet – it may seem obvious, but you'll need to ensure that each week's winning entry was submitted that week. Linked to this, the Wireless Application Service Providers' Association (WASPA) says the promoter must still choose a winner even if a limited amount or poor quality of entries is received.

Strachan ended on another hot topic that has implications when running both lucky draws and skill contests: Data protection and privacy. This has been a very long time in the works, but the Protection of Personal Information Act or [POPI regulator](#) has finally been appointed so it's really not that far off now – Strachan predicts the Act will likely be promulgated by May 2017. So if you gather personal information about consumers, such as asking them to SMS their contact details for entry into a promotion, be sure you comply when processing that data. You also need to beware of WASPA's [rules for short-code competitions](#) as the fines and sanctions are serious, running to [around R300,000](#).

Best you get clued up, fast!

[Click here](#) for a reminder of what three of GALA's global legal lawyers had to say about other advertising pitfalls to avoid, [here](#) for a gallery of the afternoon and [here](#) for more on the future of mobile prize promotions, particularly from the consumer protection angle.

## ABOUT LEIGH ANDREWS

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