



Legal Guide U-4

RULES ON CONDITIONAL OFFER OF PRIZES OR GIFTS (California Business and Professions Code section 17537)

March 2010

It is unlawful for any person to use the terms “prize,” “gift,” or any similar term in any untrue or misleading manner, including as described below.

It is unlawful for any person, as part of an advertising program, to notify another (the “recipient”) that he or she has won a prize, and that as a condition of receipt, the recipient must pay any money or purchase or rent any goods or services. For instance, it is unlawful for an advertiser to tell a recipient that he or she has won a prize when this is not true, or when the recipient must pay shipping charges or must purchase something in order to obtain the prize.

The rules which apply to “gifts” are more complicated. Restrictions apply when as part of an advertising program, a person notifies a recipient that he or she will receive a gift, and that as a condition of receipt, the recipient must pay any money or purchase or rent any goods or services. In particular, it is unlawful for a person offering a gift (the “offeror”) to tell a recipient that he or she has been specially selected unless this representation is true, and unless the recipient has made a purchase from the offeror within the previous six months, or has a credit card or retail installment account with the offeror.¹ Other restrictions limit the amount of shipping and handling charges that may be imposed.² The amount which may be charged for the goods or services which must be purchased or leased in order to obtain the gift cannot exceed the price of the goods or services that could have been purchased or leased from the offer or without the gift, at or proximate to the time the gift was offered.³ Restrictions also limit the extent to which such goods or services may be sold or leased in conjunction with the offer of the gift.⁴ See Business and Professions Code sections 17537(c)(1)-(5) for additional details on these restrictions.

Each violation of these provisions is a misdemeanor punishable by six months in county jail, a fine up to \$2,500, or both.

ENFORCEMENT

The misdemeanor provisions are enforceable by the Attorney General or by any district attorney. Section 17537 also may be enforced through civil court actions filed by private parties, district attorneys, the Attorney General and other agencies of the State. Depending on the nature of the civil action, remedies include injunction, restitution, and civil penalties of \$2,500 for each violation. A conditional offer which violates the provisions described herein also may be subject to an additional civil penalty of up to \$2,500 for each violation as an unlawful business practice. A court in a civil action brought by a recipient may award him or her treble damages (three times

actual damages) against an offeror who has violated the provisions on conditional offers of prizes and gifts.⁵ The court may also award reasonable attorneys fees to the prevailing party.⁶

NOTICE TO READER

The Department of Consumer Affairs strives to make its legal guides accurate in every respect. However, this legal guide is only a guideline, and is not a definitive statement of the law. Questions about the law's application to specific circumstances should be directed to an attorney.

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ENDNOTES

¹ Business and Professions Code § 17537(c)(5).

² Business and Professions Code § 17537(c)(1) and (2).

³ Business and Professions Code § 17537(c)(3).

⁴ Business and Professions Code § 17537(c)(4).

⁵ Business and Professions Code § 17537.4.

⁶ Business and Professions Code § 17537.4.