

to influence these consumers' purchasing decisions, inducing them to purchase a product or service they otherwise would not purchase just so they can increase their chances of winning. For this reason, the Commission believes that entities using these promotions must disclose that a purchase will not enhance the chance of winning, to ensure that consumers are not deceived.

Commenters who addressed this proposal generally were supportive of adding the disclosure.²³⁶ NAAG supported the additional disclosure, but asked the Commission to go further. First, NAAG suggested that any telemarketer using a prize promotion should be required to disclose the actual or estimated odds—not simply how the odds might be calculated.²³⁷ Second, NAAG recommended that the original Rule's definition of "prize"²³⁸ be made consistent with state laws and regulations, and the several multi-state settlements with large promotional sweepstakes companies.²³⁹ Third, they recommended that the Commission track provisions in the recent settlements between the states and PCH, which would ensure that the means by which a consumer might enter a sweepstakes without making a purchase is not more difficult than if a purchase were made.²⁴⁰ Each of these suggestions is discussed below.

As noted in the SBP for the original Rule, the Commission continues to believe that, in many instances, actual odds cannot be calculated in advance. In such circumstances, the Commission believes that requiring prize promoters to disclose "estimated" odds has greater potential for abuse than a disclosure of the method used to calculate those odds.²⁴¹ Furthermore, in many

instances, such a requirement to disclose odds would reveal that virtually every entrant gets a "prize." The Commission believes that the better course is to require prize promoters to disclose the method by which odds are calculated. With regard to the suggestions to revise the definition of "prize" and the ease of entry for non-purchasers, the record provides no evidence on why the difference between a "prize" and a "free gift" would be material to consumers. The Commission believes that its authority to reach deceptive or unfair acts or practices under the FTC Act has been sufficient to address any deceptive prize promotions that have not been reachable under the Rule.²⁴² The Commission's requirements regarding prize promotion disclosures are not inconsistent and do not conflict with the more restrictive state laws. Therefore, the Commission declines to adopt NAAG's recommendations.

PMA maintained that the disclosure that making a purchase would not improve a customer's chances of winning was unnecessary and that there was no evidence on the record to support its addition to the Rule.²⁴³ They suggested that the disclosure makes sense in the context of direct mail, but not in the types of representations more often found in telemarketing.²⁴⁴ Nonetheless, the PMA stated that, as a gesture of good faith, they would not oppose the change.²⁴⁵

Therefore, the Commission has determined that it is a deceptive telemarketing act or practice to fail to disclose before the customer pays, in any prize promotion, the odds of being able to receive the prize, that no purchase or payment is required to win a prize or participate in a prize promotion, that any purchase or payment will not increase the person's chances of winning, and the no-purchase/no-payment method of participating in the prize promotion.

for activity that does not cause consumer injury, since it is hard to imagine what harm is caused to consumers by *underestimating* the odds of winning.

²⁴² See, e.g., *FTC v. Landers*, No. 100-CV-1582 (N.D. Ga. filed June 22, 2000); *New World Bank Servs., Inc.*, No. CV-00-07225-GHK (C.D. Cal. filed July 5, 2001); *Global Network Enters., Inc.*, No. 00-625 (GET) (ANX) (C.D. Cal. 2001).

²⁴³ PMA-NPRM at 4-8.

²⁴⁴ *Id.* See also June 2002 Tr. II at 104-05.

²⁴⁵ PMA-NPRM at 5, 7. See also June 2002 Tr. II at 106, 108 (PMA and ARDA, each stating that they do not oppose the disclosure). ARDA stated in its comment that, while it is inconvenient to include additional verbiage in a telephone call, it did not find the additional disclosure unduly burdensome. ARDA-NPRM at 5.

§ 310.3(a)(1)(v) — Required disclosure of material costs in prize promotions

NACAA expressed concern that original and proposed Rule § 310.3(a)(1)(v) requires that a prize promoter disclose to consumers all "material costs or conditions to receive or redeem a prize that is the subject of the prize promotion" when there should be *no* costs to receive a prize.²⁴⁶ NACAA suggests removing the "material costs" portion of subsection (v). The Commission agrees that there should be no costs to receive or redeem a prize. In fact, § 310.3(a)(1)(iv) requires a disclosure that "no purchase or payment is required to win a prize or to participate in a prize promotion." Moreover, § 310.3(a)(2)(v) prohibits misrepresentations "that a purchase or payment is required to win a prize or participate in a prize promotion." Thus the Rule is unequivocal in forbidding conditioning a "prize" on a payment or purchase. Section 310.3(a)(1)(v) is intended to further clarify that *any* incidental cost that a consumer must incur—not merely a purchase or payment—must be disclosed in advance to avoid deception and to comply with the Rule. Despite NACAA's comment, the Commission does not believe there is any confusion regarding the role of this provision. Therefore, the Commission has determined to retain the original wording of this provision.

§ 310.3(a)(1)(vi) — Required disclosures in the sale of credit card loss protection

The telemarketing of credit card loss protection plans has been a persistent source of a significant number of complaints about fraud.²⁴⁷ Telemarketers of credit card loss protection plans represent to consumers that these plans will limit the consumer's liability if his credit card is lost or stolen.²⁴⁸ These telemarketers frequently misrepresent themselves as being affiliated with the consumer's credit card issuer, or misrepresent either affirmatively or by omission that the consumer is not currently protected against credit card fraud, or that the consumer has greater potential legal liability for unauthorized use of his or her credit cards than he or she actually

²⁴⁶ NACAA-NPRM at 6-7 (pointing out that, if there are costs, then the "prize offer" becomes a sales pitch for add-ons, not a prize).

²⁴⁷ See, e.g., NCL-NPRM at 6.

²⁴⁸ Credit card loss protection plans are distinguished from credit card registration plans, in which consumers pay a fee to register their credit cards with a central party, who agrees to contact the consumers' credit card companies if the consumers' cards are lost or stolen.

damages. See, e.g., *Washington v. Am. Family Publishers*, King County Super. Ct., No. 99-09354-2 SEA (2000).

²³⁶ ARDA-NPRM at 5; NAAG-NPRM at 54-55; NACAA-NPRM at 6-7; NCL-NPRM at 4; DOJ-NPRM at 3-4. See also June 2002 Tr. II at 105-15.

²³⁷ NAAG-NPRM at 54. NACAA also recommended that the Commission require more specificity in the disclosure regarding the odds. NACAA-NPRM at 6-7; and discussion regarding the disclosure of odds, June 2002 Tr. II at 113-15. DOJ recommended that the Commission include a brief explanation in the Rule or in a footnote of what is meant by the phrase "the odds of being able to receive a prize," and clarify that the disclosure must give the odds for each prize. DOJ-NPRM at 3-4.

²³⁸ Original Rule § 310.2(v).

²³⁹ NAAG-NPRM at 54. NAAG recommended that "prize" be defined to be an item of value and that it not be an item that substantially all entrants in the promotion will receive.

²⁴⁰ *Id.* at 54-55.

²⁴¹ Ironically, requiring accurate disclosure of the odds of winning also is likely to subject some sellers and telemarketers to liability under the Rule