

Make Me a Winner broadcast competition

Type of case	Broadcast Standards
Decision	In Breach
Service	Kiss FM
Date & time	Various times between 19 April and 29 July 2022
Category	Competitions
Summary	A number of invitations to participate did not include a reference to the competition's accumulative pool of entries. In breach of Rule 2.15 of the Broadcasting Code.

Introduction

Kiss FM is a national radio station specialising in urban and dance music. The licence for the service is held by Bauer Radio Limited ("Bauer Radio" or "the Licensee").

The *Make Me A Winner* competition offered listeners the opportunity to win a substantial cash prize averaging approximately £65,000 every weekday from 19 April to 29 July - a total of 101 working days. Entry to the competition was via premium rate text message charged at £2 plus the user's standard network rate. Listeners could also enter free of charge via the radio station's website.

Invitations to participate were broadcast multiple times throughout the day across the Bauer network of 23 radio stations. On each day of the competition, entry was suspended between 16:00 and 16:10 and during this time a potential winner for the day was selected at random from the pool of entrants. When called, the selected entrant was required to answer within five rings and say the phrase "*Make Me a Winner*" in order to win the day's cash prize. Once the entry window had reopened (after 16:10), listeners could continue to participate, and all unsuccessful entrants were automatically entered into subsequent draws for the remainder of the competition period. The pool of entries for each draw therefore increased across the duration of the competition.

Ofcom received a complaint from a listener about the promotion of the competition during the programme *Kiss Breakfast with Jordan* [Banjo] ("JB") and *Perri* [Kiely] ("PK") on 26 April 2022:

JB: *"Morning, welcome to Tuesday the 26th of April. It's 8am and the quiz that gets quicker is coming up next, but right now we need to tell you how you could win £85,000 tax free cash today".*

PK: *"Imagine having that land in your bank account in time for the bank holiday weekend, like I think you could afford more than just the Monday off work. You know what I mean just ring up tell your boss 'I'm just not going back' and yes I did just tell you to quit".*

JB: *"It's a brutal phone call".*

PK: *"Don't quit until you get the money though".*

JB: *"Yes, definitely wait til, til you win. To enter text WIN to 64100, that's WIN to 64100. Entry lines shut at 4pm, and we could be calling you, answer in 5 rings, but don't say hello, this is very important. You've got to say 'Make Me a Winner'. Do that and £85,000 is yours. Texts cost £2 plus your standard network rate, it's a network competition, over 18s only, full terms and online entry on our website. Do not forget to say 'Make Me a Winner' when you answer the phone for your chance to win 85 grand, text WIN to 64100, right now".*

The complainant was concerned that: the invitation to participate made no reference to the fact that unsuccessful entries would be valid for the remainder of the competition period; and consequently, listeners may have been unaware that the chances of being selected were considerably less when compared to a standalone competition conducted on a single day.

We requested information from Bauer Radio regarding the promotion of the competition between 19 April and 30 May 2022; this amounted to 30 rounds of the competition. It provided a recording of an invitation to participate that was broadcast on 19 April 2022 which highlighted that unsuccessful entrants remained in the competition until the end date of the competition period:

Presenter: *"So let's get you registered, text the word WIN to 64100, WIN to 64100 we hit the reset button on entries after Sharon [previous winner] won on Thursday so make sure you enter today and you'll be in every single draw until the end of July. Again WIN to 64100, that text is £2 plus your standard network rate, this is a network competition, over 18s only, full terms and online entry are on the website. Again, WIN to 64100, then when entry lines close at 4 o'clock this afternoon we could be phoning you. You need to answer in 5 rings and you must answer by saying the phrase 'Make Me a Winner', you do that today, you could be winning £50,000. Get that text in right now, WIN to 64100".*

Bauer Radio also provided:

- scripts that presenters across the Bauer network used for promoting the competition for each of the 30 days detailed in our request. The information indicated that the accumulative nature of competition entries, as referenced above, was mentioned on 11 days. Therefore, there were 19 days (63% of the time) when the invitations to participate did not directly inform listeners of this fact;
- information which showed that the number of eligible entrants increased considerably each time the competition was conducted; and
- information which showed that a significant number of individuals submitted multiple entries during this period. When providing this data, the Licensee gave Ofcom its assurance that all repeat entries had been counted and entered into each daily draw.

Ofcom considered the material raised issues warranting investigation under Rule 2.15 of the Code.

Rule 2.15 “Broadcasters must draw up rules for a broadcast competition or vote. These must be clear and appropriately made known. In particular, significant conditions that may affect a viewer’s or listener’s decision to participate must be stated at the time an invitation to participate is broadcast”.

Ofcom therefore asked Bauer Radio for its comments on how the competition complied with this rule.

Response

Bauer Radio said that it took its legal and compliance responsibilities extremely seriously. It argued that it did not believe the accumulative nature of the competition was a significant condition and cited examples of significant conditions that it attributed to the Advertising Standards Authority (“ASA”): “How to participate”; a “Free entry route explanation”; “Start date”; “Closing date”; “Proof of purchase”; “Prizes and gifts”; “Restrictions”; “Availability”; and “Promoter’s name and address”. The Licensee stated that: the accumulative nature of a competition did not fall within these categories; it did not believe that it was correct to describe it as a condition “in the legal sense of the word”; it was not “a requirement or an obligation placed on a contracting party”; nor, did it reflect the meaning of the phrase as commonly understood.

Bauer Radio argued that the accumulation of entries was a mechanic of the competition which its listeners would have been familiar with. It added that to the best of its knowledge, it had never received a complaint from a selected entrant who had failed to answer with the correct phrase within five rings because they had not understood the accumulative nature of the competition.

The Licensee said it considered it sufficient that information about the accumulative nature of the competition was set out in the competition’s terms and conditions, which were available at all times on its website, and were referred to in every invitation that was broadcast. It added that it always made listeners aware of the mechanics of its competitions and its strong track record of compliance reflected this. It further stated that reference to the terms and conditions, which made the accumulative nature of the competition very clear, occurred in every invitation to enter and that it also let listeners know about this specific element of the competition on air by sometimes using scripts that stated: “Enter now and you’ll be in every draw until the end of July”.

Bauer Radio reiterated that, to the best of its knowledge, it had never received a complaint from anyone who claimed to have been misled as to the accumulative nature of the *Make Me a Winner* competition and that it was firmly of the view that this was because listeners had not been misled and were fully aware of the mechanics of the competition.

Decision

Reflecting our duties under the Communications Act 2003, Section Two of the Code requires that generally accepted standards are applied to the content of "...radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful...material".

This is reflected in part by Rule 2.15 of the Code, which requires, among other things, that broadcasters "draw up rules for a broadcast competition", make them "clear and appropriately made known" and, in particular, state "significant conditions that may affect a...listener's decision to participate...at the time an invitation to participate is broadcast". This rule serves to prevent broadcast competitions from misleading the audience in such a way as to cause material harm, such as financial loss.

The Licensee argued that the accumulative nature of the competition would not be commonly understood to be a condition as it was not "a requirement or an obligation placed on a contracting party", nor did believe it was such in the legal sense of the word. Further, Bauer Radio considered the accumulative nature of the competition was not a significant condition and therefore considered it was sufficient to include this information in the competition's written terms and conditions, to which listeners were referred each time they were invited on air to participate. The Licensee referred to examples of significant conditions cited by the ASA, which Ofcom understood as a reference to rules that apply to promotional marketing, as set out in the [CAP non-broadcast advertising code](#).

The rules applicable to this broadcast competition are those set out in Ofcom's Broadcasting Code. Specifically, Section Two of the Code contains rules that apply to broadcast competitions and voting, including Rule 2.15.

[Guidance to Section Two of the Code](#) makes clear that Ofcom normally expects broadcasters to make listeners aware if participation in a competition is "spread wider (i.e., beyond the local area) than might be obvious to the viewer/listener in any one area. This should be done both on air and in any written rules, whenever the competition or its results are run". The purpose of this guidance is to ensure listeners are made aware when a pool of potential entrants in a competition is likely to be larger than they may anticipate. As the size of the pool of entrants has the potential to impact on an entrant's chance of winning, this information may affect a listener's decision to enter a competition.

Reflecting this guidance, in [Issue 216 of Ofcom's Broadcast Bulletin](#) published in October 2012, Ofcom recorded a breach of Rule 2.15 against Bauer Radio for a broadcast competition promotion that made no reference to the fact that it was run over a network of five stations (*Thousand Pound Thursday* competition Northsound 2, Clyde 2, Tay AM, Forth 2, and Westsound). Ofcom concluded that the fact that the competition was open to a considerably larger number of people than entrants were likely to have anticipated, was likely to be a significant condition that may have affected listeners' decisions to participate.

In the case of the *Make Me A Winner* competition, the accumulative nature of the competition resulted in an increasingly large pool of entrants each day, of which listeners may have been unaware when it was not made clear in the on-air invitation to participate. Each daily draw saw a significant increase in the number of valid entries, which resulted in a significant accumulative reduction in the chances of an entrant being selected as the competition progressed. We acknowledged that presenters' scripts provided to us by Bauer Radio referred to the fact that entrants would be "*in every single draw until the end of July*". However, based on the information provided to us by the Licensee, the accumulative nature of competition entries was not referred to by presenters 63% of time in a 30 day period.

Given the above, Ofcom considered that, on a significant number of occasions, listeners were not being made aware of the significant accumulative reduction in the chances of their entry being selected as the competition progressed. In our view, without this important piece of information, listeners may have expected that an entry would be drawn only from the pool of entries received on the same day, i.e. from a much smaller pool of entries. We also took into account that a significant number of individuals had submitted multiple entries. It was not possible for Ofcom to determine whether these individuals were aware of the accumulative nature of the competition but had chosen to submit multiple entries to increase their chances of winning, or whether they were unaware that their previous entries were still valid. However, the lack of reference to the accumulative nature of the competition in a considerable number of on-air invitations to enter meant it was possible that some listeners had submitted repeat entries unnecessarily at an additional cost to them.

We acknowledged that Bauer Radio was confident its listeners fully understood the competition's mechanic, given the absence of any complaints from the selected entrants across its network of participating stations. However, Ofcom was concerned that the Licensee had not given due regard to the potential impact of the competition's mechanic on a listener's decision to participate. Ofcom therefore concluded that the accumulative nature of the competition was a significant condition that may have affected a listener's decision to participate.

Ofcom accepted that Bauer Radio had not sought to mislead listeners. However, Ofcom's Decision is that a significant condition of the competition, which may have affected a listener's decision to participate, had not been appropriately made known, in breach of Rule 2.15 of the Code.

Breach of Rule 2.15