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 <h5>Really, scratch and don't win</h5> By : Sonia Ramachandran Datuk Mohd Zain Mohd Dom says announcement on ban has given muscle to the issue of scratch-and-win scams. SCRATCH-AND-WIN contests are alive and thriving although a ban was announced by the government more than a year ago.
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Former domestic trade and consumer affairs minister Datuk Seri Mohd Shafie Apdal had announced on Dec 3 last year that they were banned and many hailed it as a "victory for consumers". However, it would appear that this ban was only administrative. International Association for Consumer Law deputy pre-sident Datuk Dr Sothi Rachagan said for the ban to take effect, it had to be gazetted. "There must be a legal process involved. A mere declaration by the minister does not bring it into effect," said Sothi, who co-drafted the Consumer Protection Act with Professor P. Balan. Today, scams are on the rise. The National Consumer Complaints Centre records an average of five complaints a day. As of last month, there have been 1,690 complaints lodged with the centre, resulting in losses of more than RM8 million. Last year there were 1,933 complaints lodged and in 2006, there were 1,499. As of Dec 15, the Consumer Claims Tribunal had heard 1,205 cases. Last year, it heard 1,669 cases and in 2006, 1,464. Although the ban is only administrative, the ministry said that the Direct Sales Act 1993 covered unethical practices and allowed its controller to revoke the licences of companies running scratch-and-win scams. "The announcement of the ban gave muscle to the whole issue, which was on the rise," said ministry secretary-general Datuk Mohd Zain Mohd Dom. "It does not help that consumers still keep falling for it." Zain said the ministry was working with the Companies Commission to curb the problem. "We are talking about how we can go after the directors of these companies and if they abscond, to go after the company secretary. We will also bring in Bank Negara for further discussions." Sothi said scratch-and-win contests involved cheating and were offences under the Penal Code, and also under the Consumer Protection Act 1999, which states that no person shall offer any gift or free item without an intention of providing it. Depending on the exact form used, they could also be illegal under the Lotteries Act 1952, which states that any lottery promoted without a Finance Ministry permit was unlawful. "The fact participants have to scratch to win something makes it a lottery." On whether a scratch-and-win victim has any recourse at the Consumers Complaint Tribunal, Sothi said yes. "You cannot bring a criminal matter for consideration to the tribunal, but you can bring a civil action to get your money back." Bar Council vice-president Ragunath Kesavan said that there should be more inter-agency cooperation to curb this problem. "This is outright cheating. Even if the licences of the companies had not been revoked, it is still an offence under the Penal Code. "It is an offence by itself as it involves cheating and gambling. For it to become illegal only if it is gazetted is not an issue because it is illegal by the nature of its act." The National Consumer Complaints Centre's complaints manager, B. Yesotha, said the Domestic Trade and Consumer Affairs Ministry should act more firmly on complaints referred to them. She said complainants were directed to the ministry's enforcement unit but the unit had told them to file a case at the Consumer Claims

Tribunal. "What is the tribunal's role in this? It's already a criminal matter. Those running these companies should be in jail." Yesotha said some of the complaints received were regarding companies whose licences had been revoked and whose names were published on the ministry's website. She said Bank Negara, too, needed to handle complaints better. One victim of a company, whose licence had been revoked, filed a complaint with Bank Negara only to be told that she needed to file a written complaint and it would "take 14 days to process the complaint". By : Sonia Ramachandran