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Cause-Related Marketing: The California Rules

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Fundraising is the lifeblood of 501(c)(3) charities.

Whether an organization has an in-house development department or hires consultants, government regulators take a keen interest in the process and the results of soliciting charitable donations.

Outside Solicitation Help

In *Taking Fundraising Outside the Organization* (September 13, 2015), we introduced the California rules that apply when a charity turns to outside help with fundraising. The Supervision of Trustees and Fundraisers for Charitable Purposes Act makes clear that the ultimate responsibility rests with the group for which the money is raised:

A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must ensure that fundraising activities are conducted without coercion. [CA Gov't Code sec. 12599.6(b)]

There are three types of fundraising consultants or arrangements that are specifically identified in, and regulated by, that law:

- "commercial fundraisers;"
- "commercial co-venturers;" and
- "fundraising counsel"

In *Beyond the Basics of Fundraising: Commercial Fundraisers*, we covered the basic rules about "commercial fundraisers."

Here we move on to the next category: “commercial coventurers.” That’s the official name for the profit-making partners in what is commonly known as “cause-marketing” or “cause-related marketing.”

What, Exactly, is Cause-Related Marketing?

Back in the early 1980s, American Express took a huge marketing gamble with a creative but entirely untested concept: teaming up with a nonprofit to generate win-win results for both sides.

The credit-card giant made an arrangement with the nonprofit that was spearheading the fundraising effort to restore the Statue of Liberty. In conjunction with a new advertising campaign, American Express donated to the nonprofit a portion of each credit card purchase and an additional contribution for each new, approved credit card application. It was a huge success for both sides, and the rest is history.

Now a “billion-dollar-a-year industry,” it’s been described as the “model of choice for collaborations between nonprofit organizations and for-profit companies.”

In its simplest form, a commercial coventure or cause-related marketing project is “an agreement between a business and a nonprofit to raise money for a particular cause.”

The nonprofit, of course, receives the windfall of substantial financial support without having to do much else other than consent to joining in this arrangement and allowing the for-profit business to announce to the general public that a percentage of sales will be donated to the charity. Actually, it’s important for the nonprofit to remain as passive a partner as possible in order to avoid the IRS claiming that the activity constitutes an unrelated business activity, subject to the unrelated business income tax (“UBIT”).

The for-profit business benefits from the “halo effect” of being associated in the public’s mind with a worthy cause, and the marketing campaign generally has the effect of boosting sales of the firm’s product line.

These cause-related projects can take one of several formats, the most common being the simplest and most direct: telling the general public that a set portion of the sale proceeds of product or service will be donated to a designated charity.

Sometimes there will be a special promotion, like the sale of color-coded items: pink to support breast cancer research nonprofits or red to support HIV/AIDS prevention.

Other variations include:

- Purchase Plus: Customers are asked at a checkout line to add a small donation to the bill.
- Licensing of Logo or Brand: An example is the American Heart Association certifying that meet their standards for heart health.
- Social or public service marketing: Using marketing principles and techniques to encourage behavior change in a particular audience, like the partnering of the American Cancer Society and Novartis, on their Great American Smokeout.

The California Regulatory View

California is one of many states that regulate these cause-related marketing programs or commercial co-ventures.

The official definition of "commercial co-venturer" is at California Government Code section 12599.2:

...[a]ny person who, for profit regularly and primarily engaged in trade or commerce other than in connection with the raising of funds, assets, or

property for charitable organizations or charitable purposes, and who represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charitable organization or will be used for a charitable purpose.

There are two alternatives available for commercial co-venturers: The company must either:

- Contract: Sign a written contract with the nonprofit before any advertising begins; turn over money collected every 90 days starting from the advertising commencement date; and provide a written accounting for each 90-day donation period to the nonprofit; or
- Register and Report: Register and file periodic reports with the AG and pay an annual fee.

Whichever option is chosen, it's always a good idea to have a written contract spelling out all of the details and mutual obligations of the parties.

While these are the requirements for the commercial partner, the nonprofit involved in this arrangement must also include, in its regular periodic reports to the California Attorney General, the coventurer's name and other identifying information.

Best Practices Nationally

Many cause-related marketing programs are national – or even international – in scope, so it's important to be aware of the compliance rules of any and all interested jurisdictions.

Recently, the Attorney General of New York, Eric Schneiderman, conducted an intensive, year-long review of these types of programs. While the focus was specifically on campaigns connected with breast cancer research, the Attorney General's office made clear that the conclusions reached apply across the board to these activities.

While cause marketing can result in substantial benefits to charities, it is important that consumers understand how the charity will benefit and that it will receive what has been promised. To protect consumers and help charities, Attorney General Schneiderman has issued Five Best Practices for Transparent Cause Marketing. Companies and charities are urged to adopt these practices in their cause marketing campaigns.

These five "best practices" recommendations are:

- Clearly Describe the Promotion
- Allow Consumers to Easily Determine Donation Amount
- Be Transparent About What is Not Apparent

- Ensure Transparency in Social Media
- Tell the Public How Much Was Raised

Conclusion

Particularly with an activity like this with such a wide geographic footprint, it's important for participants to standardize their practices and ensure that any cause-related marketing campaign they choose to promote not be tainted or burdened with regulatory problems or accountability issues.

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