FPLG: CIVIL LITIGATION

Class Action Lawsuit Against PayPal Giving Fund

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In 2016, overall charitable giving rose 1%, but online giving jumped 7.9%, and all indications are using technology to facilitate donations will continue to grow rapidly.

Paypal's online platform, Paypal Giving Fund, has aimed to "create a network of donors, businesses & charities so all can participate in helping charities raise "new, unrestricted funds." This Fund is a nonprofit that "raises new funds through charities through technology."

It's facing a serious challenge, though: a newly filed class-action lawsuit.
How this plays out in the courts may affect many charitable donors and organizations, as well as on the viability of this new giving platform itself.

Using New Technology to Harness Online Giving

Paypal Giving Fund describes itself on its website:

> *Working with leading internet businesses, PayPal Giving Fund generates more than $35m in donations each year to benefit charities in the US and UK. Participation in PayPal Giving Fund is free, and we provide donation and donor reports, issue tax receipts, aggregate donations for monthly electronic distribution, and handle legal registration requirements — all without charging donors or charities for our services.*

"PayPal makes it easy for donors to find and support their favorite charities while at home or on the go." The service partners with PayPal, eBay for Charity, and crowdfunding platform GoFundMe. According to its Form 990,

> *PayPal Charitable Giving Fund is operated for the benefit of the nonprofit sector. The program raises awareness and support for nonprofits, primarily through the eBay marketplaces and PayPal. eBay sellers can give all or a portion of the proceeds from their sales, buyers can add a donation to their purchase, and PayPal users can simply make a donation to one of more than 29,000 participating organizations thanks to operating support from eBay Inc. and PayPal. PayPal Charitable Giving Fund grants 100% of donations received through the programs it enables. [Edited for spelling and punctuation.]*

Class-Action Lawsuit Filed

This program of online payment giant, PayPal, is now facing what may become a significant obstacle: a lawsuit "claiming that the company didn't deliver charitable donations made on the company's platform, as promised."

A 36-page complaint was filed in federal district court in the Northern District of Illinois late in February 2017. Titled *Friends for Health: Supporting the North Shore Health Center, an Illinois nonprofit corporation, and Terry Kass, individually and on behalf of all others similarly situated, Plaintiffs, v. PayPal, Inc., a Delaware corporation, and PayPal Charitable Giving Fund, a Delaware nonprofit corporation* (1:17-cv-01542), it is classified as a trademark infringement matter.

The lead plaintiffs – in what they hope will be certified as a class action – are a woman "seeking to give a gift" and the charity which was one of a number of intended recipient. The proposed "group" are "all charities and all donors to charities that were misled and/or harmed by PayPay's actions as well as those of the Washington, D.C.-based PayPal Charitable Giving Fund.

Counsel for plaintiffs is Edelson PC, self-described "titans of the plaintiffs' bar" and a " "recognized leader in plaintiffs class and mass action litigation. The details are explained in the complaint that provides screenshots of actual webpages of the PayPal Charitable Giving Fund as well as explanations of the process by which the platform solicits "gifts from its account holders on behalf of 501(c)(3) public charities." It also, of course, "how it all allegedly goes wrong."

According to the Complaint,

> *PayPal tells donors that they can give to more than a million U.S. nonprofits using their web-based interface. However, what donors aren't told is that only charities that have a PayPal business account and which have registered with PayPal Charitable Giving Fund may receive donors' gifts [but] only 29,000 nonprofits had registered accounts in 2015, which matches what the Fund reported on its 2015 Form 990.*

Terry Kass claims she "used PayPal to give a total of $3,250 to 13 different nonprofits, including Friends for Health" but "unbeknownst to" her,

> *even though PayPal giving platform profile pages for all thirteen charities already existed, only three of them were actually registered with Defendants, and only those three could receive donated funds. As such, instead of delivering a combined $3,250 to thirteen different charities, Defendants only delivered a combined $100, or 3 percent of her donation, to those three charities. The remaining $3,150—which Plaintiff Kass donated to ten local-level charities—was withheld from the intended organizations.*

Among additional allegations are that "the donation webpages not only use many nonprofits' names and logos apparently without the knowledge or consent of the organizations, [but] the pages often include information leading a donor to believe the process for a specific charity has been vetted and endorsed by PayPal."

Also –

> *PayPal never informs donors that processing their gifts for the charity of their choice is dependent on a business relationship between PayPal and the charity. PayPal doesn't routinely inform nonprofits not registered with them or the PayPal Charitable Giving Fund that it is holding gifts intended for them. PayPal doesn't tell either its customers making donations or the affected nonprofits that six months following receipt of gifts for non-registered charities, those gifts are donated by PayPal to charities of PayPal's choice.*

PayPal Denies the Allegations

PayPal, of course, disagrees. Initially, PayPal issued a brief statement through a spokesperson: that it "only recently became aware of this filing and [is] reviewing the contents. Describing the lawsuit as "misleading," it asserts it is "fully prepared to defend … vigorously."

The firm later issued a fuller, more formal statement, on its website, including, e.g., the full text is *here,* including, e.g.,:

> *Contrary to the lawsuit's allegations, the PayPal Giving Fund has not redirected any of the charitable gifts donated during the holiday campaign to charities not selected by the donor.*

"The expansion of charities on the platform was the result of a partnership with Guidestar" which provides "a great opportunity for charities and donors to the PayPal Giving Fund alike."

> *When the company receives a gift intended for a charity that is not enrolled in the platform [it makes] multiple attempts to contact unenrolled charities on a monthly basis for at least six months, via email, letter and, in some cases, phone calls.*

During this time, "all donations are placed in a secure and segregated, non-interest bearing account maintained by PayPal Giving Fund."
The full text of the online response is *here*.

Conclusion

The plaintiffs don't dispute "that the company might have had positive intentions," a platform for charities to receive donations "is a good thing." But they allege that PayPal "lacked transparency

throughout the process" and "grew their platform faster than their feet could carry them."

The lawsuit "illustrates the complexity that belies the simplicity of online donation platforms" because "few donors realize that their gifts are, in fact, gifts to intermediaries like the PayPal Giving Fund rather than direct gifts to their intended charity."

It also "brings up the thorny issue of how much of a donor's gift actually gets to the intended charity." While PayPal promises that 100 percent of donations will go to the charity of the donor's choice, it appears there is a 1% service charge assessed.