

Legal considerations for partnerships

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Cause-Marketing Compliance Checklist

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“Cause Marketing” can take many forms. The guidelines below apply to the three most common forms of offer: (i) sale of product with promise to donate for each sale (“Charitable Sale Promotion”); (ii) promise to donate when a consumer takes an action that is totally free, such as “liking” a Facebook page (“Free Action Offer”); and (iii) solicitation of donation from customer at checkout (“Donation at Checkout”).

CHARITABLE SALES PROMOTION

When selling any product or service based on a representation that the purchase or use of that product or service will benefit a charitable organization or charitable purpose, the following compliance steps should be followed.

1. Written Contract. There should be a written contract between the company and the charity. Specific provisions are required under various state laws. Consult knowledgeable legal counsel for assistance in creating the contract.
2. Ad Disclosures I. Each and every communication of the offer to the public should disclose the exact amount being donated to the charity on a per-unit basis. The amount should be expressed in dollars and cents, or as a percentage of the retail purchase price. Terms like “proceeds,” “net proceeds,” “profits,” “net profits” or a percentage of “profits” should not be used unless accompanied by an explanation of the estimated minimum amount (in dollars and cents) to be donated for each purchase.
3. Ad Disclosures II. The consumer should not be misled as to the effect any purchase or other invited action might have on any donation. This requires careful examination of the facts of each case. For example, if there is a maximum amount on the donation, there should be a mechanism in place to end the offer if/when the maximum is reached. Or if there is a guaranteed minimum, the amount should not be set so high as to exceed likely sales and thereby negate the relevance of consumer action. Again, the facts of each case must be reviewed carefully whenever a maximum or minimum applies.
4. Registration. Seven U.S. states (plus a few Canadian provinces) have registration requirements as follows:
 - a. Maine, Massachusetts & Alabama. Obtain annual “license” from the state and post a bond of \$10,000 (AL) or \$25,000 (MA & ME). Plus file a notice of each program with the state. Annual renewals come due at the end of September

(AL), November (ME) and December (MA).

- b. South Carolina, Mississippi & Hawaii. File a copy of the contract for each program.
 - c. Illinois. Register the company as a “Charitable Trust” separately for each program.
5. Annual Reports. The results of all charitable sales promotions get reported to the states of MS, ME, MA, AL & IL. A detailed accounting of each program, including information on goods sold, revenues generated, and the calculation and payment of the donation should be maintained for at least three years after the promotion is over.
 6. Charity Duties. The charity should be registered for general fundraising purposes nationwide (39 states) for a nationwide offer. In addition, the charity has a duty to file a copy of the program agreement in the states of NH, CT, NJ, AR & UT. The company has no duty to supervise the charity, but should verify that the charity is in fact registered for general fundraising purposes in each relevant state before agreeing to conduct a program for a charity.
 7. International Programs. Laws vary by country. Check with legal prior to seeking to conduct a charitable sales promotion outside the United States. The principle issue to verify in most countries is whether the charity is required to be registered for fundraising in that country, and, if so, whether the charity in fact has complied with that requirement. Again, laws vary by country. Check with legal counsel in each case. Clearance by local counsel in each affected country may be required.

FREE ACTION OFFER

If the consumer is not required to make any purchase, or to make any donation, to trigger a donation (for example, a donation is made for logging on to a web site, tweeting a message, “liking” a Facebook page, etc.), state regulators typically do not interpret their charitable sales promotion laws to apply, though it is theoretically possible for them to do so. Nevertheless, having a proper contract and making clear disclosures as outlined above for charitable sales promotions is strongly recommended.

DONATION AT CHECKOUT

If the company is not compensated in any way by the charity, and if the company retains none of the consumer’s donation, and if no purchase is required as a condition of the consumer making the donation, then regulation of Donation-at-Checkout programs is generally much less than for charitable sales promotions. However, be aware of the following:

1. Massachusetts or Illinois could apply their charitable sales promotion laws, at least to the extent the company holds the consumer’s donation prior to delivering it to the charity.
2. “Solicitation” disclosures are technically required to be made at the time and place where the consumer is invited to make the donation. There are specific disclosures for each of

at least 10 different states. The complete disclosure statement can become lengthy if all state disclosures are included. Consult knowledgeable legal counsel for the full list of disclosures.

3. Laws vary by country. Check with legal counsel prior to seeking to conduct a donation-at-checkout program outside the United States. The principle issue to verify in most countries is whether the charity is required to be registered for fundraising in that country, and, if so, whether the charity in fact has complied with that requirement.

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