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Cause Marketing May Cause Charitable Compliance Requirements

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Cause marketing has become ubiquitous in bringing charities and for-profit companies together to mutually benefit each other and their communities. Cause marketing comes in many varieties. Sometimes a portion of sale proceeds is donated to charity, or other point-of-sale transactions permit customers at check-out to either donate a dollar or round-up their purchase to the next dollar with a donation. Campaigns often involve social media, and sometimes sharing or liking a message results in a corporate donation. An example of cause marketing is the Yoplait “Save Lids to Save Lives” campaign, in which Yoplait donates ten cents for every pink lid that is returned to it to support the Susan G. Komen Breast Cancer Foundation. Also, the Whole Foods Nickels for Nonprofits campaign allows customers to either receive or donate five cents for each reusable bag they provide.

Such campaigns are designed to benefit charities through increased donations, exposure, and alignment with a well-known brand. For-profit companies may be able to use cause marketing to build a socially responsible reputation, raise sales among like-minded consumers, and improve employee morale. While these benefits are typically the focus of cause marketing campaigns, it is important to consider legal compliance aspects of each campaign as well.

Charitable Solicitation Registration

Ohio, like most states, requires charities soliciting contributions to register with the Ohio Attorney General *prior* to solicitation. Charities should consider the registration requirements of each state in which a cause marketing campaign is conducted and assess the impact of digital fundraising campaigns.

Charitable Sales Promotion

In addition, a cause marketing campaign may be subject to the rules governing a “charitable sales promotion” or similar term used outside Ohio. In Ohio, a charitable sales promotion is a campaign in which the

“purchase or use of goods or services” will “benefit, in whole or in part,” a charitable organization or purpose. This would include the Yoplait Save Lids to Save Lives campaign, for example. The business partner involved in the charitable sales promotion is referred to as the “commercial co-venturer.”

Prior to beginning the charitable sales promotion, the commercial co-venturer must obtain the written consent of the charitable organization whose name will be used in the charitable sales promotion. If the amount or percentage of sales that will be donated has been determined, this has to be disclosed in each advertisement of the charitable sales promotion. If the specific amount or percentage to be donated has not been determined, then a reasonable estimate must be provided. Including general language such as “a portion of the proceeds will be donated to charity” is not sufficient. The commercial co-venturer must also prepare an accounting of each charitable sales promotion it conducts, provide the accounting to the charity or Ohio Attorney General upon request, and keep the accounting for three years.

Professional Solicitor Registration

If a for-profit business receives anything of value from the cause marketing campaign, it may qualify as a professional solicitor, who is someone typically hired to raise funds for a charity in exchange for a percentage of revenue. Many states have significant professional solicitor requirements, such as an annual registration and fee, posting a bond, and submitting a written contract and accounting for each campaign. In addition to such requirements of the business, the charity would have to annually disclose that it uses professional solicitors.

Cause Marketing Agreement

A cause marketing agreement is an agreement between a charity and a for-profit business to raise money for the charity or a particular cause. Such agreements should clearly articulate the terms of the relationship. Both parties may license their marks in relation to the campaign and should maintain quality control rights over such marks. The agreement should also provide:

- the dates of the campaign;
- what donation opportunities will be offered to customers;
- the number and timing of social media and other promotions;
- who is responsible for marketing costs;
- what matching funds will be provided from the business partner, if any, and any conditions for the match;
- payment schedule;
- when a party may terminate the relationship; and
- that the business partner must provide an accounting to the charity.

The agreement should also require all parties to comply with all charitable solicitation, charitable sales promotion, and other legal requirements, as applicable.

Penalties

Failure to comply with Ohio's charitable registration requirements may result in criminal and civil penalties and an investigation and legal action by the Ohio Attorney General. Other states have similar laws. The greater consequence of non-compliance, however, may be negative publicity.

Conclusion

While cause marketing may offer impressive returns for charities and improve the bottom line for their business partners, both parties must consider the related compliance requirements for the campaign to be truly successful. Contact your Vorys attorney if you have questions about your cause marketing campaign.