

Other Regulated Entities in Commercial Co-Ventures

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OTHER REGULATED ENTITIES

- A. Professional Fundraiser/Paid Solicitor
 - 1. More than 40 states regulate professional fund-raisers and/or paid solicitors.
 - 2. Defined: A person (other than a regular employee of a charitable organization) who for compensation or other consideration solicits contributions for a charitable organization, or who employs someone else to solicit contributions for compensation.
 - 3. Legal requirements: A professional fundraiser or paid solicitor must typically register annually, post a bond, submit a copy of a written contract with the charitable organization prior to any campaign (along with campaign information and copies of campaign literature), maintain financial information, and file reports with the state.
- B. Fundraising Counsel
 - 1. Approximately 40 states regulate fundraising counsel.
 - 2. Defined: A person, who, for compensation, manages, advises or consults with respect to the solicitation of contributions by a charitable organization.
 - 3. Legal requirements: Fundraising counsel typically must have a written contract with the charity, file the contract prior to performing material services, annually register, post a bond, and account in writing to the charity for income and expenses after a campaign.
- C. Examples
 - 1. Co-operative programs. Sponsor arranges a benefit concert where all ticket sales go to charity. Charity pays for the venue.
 - a. Is Sponsor a professional fundraiser? It is soliciting funds for "other consideration" (i.e., the benefit of not paying for the venue).
 - b. Is sponsor a fundraising counsel? It did plan the event on behalf of the charity in

- exchange for other consideration
(charity's payment for the venue).
2. Website donations. Sponsor gives consumer a 10% discount for online purchases of certain goods. Consumer may elect that the "discount" is in the form of a donation to charity. Sponsor enlisted a number of charities and obtained a wholesale discount on these goods.
 - a. Is Sponsor a professional fundraiser or fundraising counsel? It conducted program on behalf of charity, held the donations, and received "other consideration" in the form of the wholesale discount.

CHARITY'S OBLIGATIONS

- A. Registration
 1. Must register in every state where the promotion is being held. The definition of "solicitation" in most states is broad enough to encompass "soliciting" done by a commercial co-venturer on behalf of the charity.
 2. 46 states require charity registration. Each state has separate filing requirements. Approximately 34 states accept the Uniform Registration Statement.
 3. *The Charleston Principles*.
 - a. Pertain to solicitation done solely online.
 - b. Guiding principles and not enacted as law in most states.
 - c. Released in 2001 by the National Association of State Charity Officials.
 - d. State registration only required if:
 - i. Charity's non-internet activities alone would trigger registration; or
 - ii. The charity solicits through an interactive website or specifically invites further offline activity to complete a contribution,
 - iii. AND EITHER,
 - (a) Specifically targets persons physically located in the state, OR

- (b) Receives repeated and substantial contributions in the state.
 - e. Guidance
 - i. If the sponsor is soliciting online purchases, it's likely the charity should be registered in those states.
 - ii. If the sponsor is only advertising online that consumers must go to brick and mortar stores to make purchases, it's likely the charity need not be registered in these states where the sponsor does not have stores.
- B. Charity's CCV registration/filing
 - 1. Charity must file a copy of the ccv contract in AR, CT, NJ.
 - 2. Charity must register the promotion in NH, NY, UT.
 - 3. Charity must file post-promotion reports in NJ, NY, NC.
- C. Charity's CCV Activities
 - 1. Acknowledgement of promotion is permitted. A charity can provide support for the promotion, but cannot actively solicit sales for the commercial co-venturer.
 - 2. Examples of permitted activity:
 - a. Allowing the commercial co-venturer to use charity's name/logo.
 - b. Listing the commercial co-venture's name on the charity's website.
 - c. Linking the commercial co-venturer's website from the charity's website.
 - d. Allowing the commercial co-venturer to be the exclusive sponsor of the charity.
 - e. Providing a general description of the commercial co-venturer's product on the charity's website.
 - f. Providing an "approval" message, such as "This promotion is approved by [charity]."

3. *Advertising* of the sponsor's product is not permitted.
 - a. Comparative advertising claims between sponsor's and another's products.
 - b. Making price or quality claims about the sponsor's product.
 - c. Affirmative "endorsement" of the sponsor's product.
 - d. Actively encouraging consumers to purchase the sponsor's product.
 - e. Allowing the charity's name/logo on other, unrelated products of the sponsor.
 - f. Linking from the charity's website to the actual product sales page on the sponsor's or another's website.
4. Consequences of Impermissible Activity
 - a. Unrelated Business Income Tax (UBIT). This tax may be triggered when the charity is deemed by the IRS to be providing active promotion or marketing of a sponsor's product.
 - b. Loss of charitable status. A potential consequence of a charity acting too much like a commercial entity.

PRACTICAL BENEFITS OF COMMERCIAL CO-VENTURES

- A. Consumers and Employees Take Notice
 1. Consumer studies show that commercial co-venturers can obtain more profits.:
 - a. 83% of consumers want companies to support causes.
 - b. 89% of consumers would switch to a similar brand that is associated with a cause.
 - c. Most consumers would pay more for a product that supports a cause.
 - d. 90% of college students pay more attention to ads that support a cause.
 - e. 75% of consumers are OK with a brand profiting through association with a cause.
 - f. BUT only 10% of consumers believe that cause marketing campaigns are sincere.

2. Studies show that employees are more attracted to companies that support a cause.
 - a. 79% of employees decide where to work based on the company's support of a cause.
 - b. 62% of employees would accept less pay from a company that supports a cause.
 - c. The 3d biggest factor of making an employment decision is a company's involvement with a cause.
3. Helpful suggestions for running a successful commercial co-venture promotion
 - a. Team with a cause/charity that compliments your business.
 - b. Do more than contribute money to the charity, such as providing free products to charity or sponsoring a benefit event.
 - c. Understand the charity's mission and needs.
 - d. Consider a long-term relationship with the charity.

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