

Compliance Issues in Commercial Co-Ventures

Prepared by:
Robert Laplaca
Verrill Dana, LLP



LORMAN[®]

Published on www.lorman.com - June 2018

Compliance Issues in Commercial Co-Ventures, ©2018 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

COMPLIANCE ISSUE – EXAMPLES

A. Yoplait Lid Promotion

In 1999, the Georgia Attorney General investigated the Yoplait promotion where Yoplait advertised on its product that it would donate 50¢ for every lid mailed in by a consumer. The maximum donation of \$100,000 was disclosed on the underside of the lid – after the consumer had purchased the item. Yoplait was fined \$63,000.

B. Big Brothers Big Sisters Road Race

The State of Tennessee imposed a \$10,000 fine on a company that operated running races which advertised that a portion of the registration fees would benefit Big Brothers Big Sisters. However, the company had not obtained the charity's prior written consent.

C. Thrift Land USA

In 2015, the New York Attorney General entered into a \$700,000 settlement with Thrift Land USA, a for-profit company which operates more than 1,100 clothing bins in the New York area. A number of charities had entered into licensing agreements with Thrift Land to use their names on the side of the donation bins. The clothes were being sold by Thrift Land to third parties at a big profit.

BEST PRACTICES

In October 2012, the New York Attorney General released a list of five best practices for "Transparent Cause Marketing"

1. *Clearly Describe the Promotion.* Consumers should be able to easily understand the promotion *before* making a purchase. The Attorney General suggested putting the following "donation information" on the product or at the point of sale:

Donation Information	
Name of Charity	ABC Cancer
Donation Amount	10 cents Per Purchase
Limitations on Donation	\$500,000 Maximum Donation
Dates of Promotion	10/1/12 through 12/31/12
More Information	www.product.com

2. *Allow Consumers to Easily Determine the Donation Amount.* Use a fixed dollar amount per purchase. Avoid terms like “profits” or “proceeds.”
3. *Be Transparent About What is Not Apparent.*
Examples:
 - a. If it’s a flat donation, be clear that consumer action will not result in a donation.
 - b. If donation is in-kind, disclose the nature and amount of in-kind donation.
 - c. If there’s a maximum donation, limit the number of units to a quantity that is reasonably expected to be sold. If there is a minimum donation, stock the shelves.
4. *Ensure Transparency in Social Media.* Track donations in real time. When a campaign ends, stop the ads or make clear that subsequent actions won’t result in donations.
5. *Tell the Public How Much Was Raised.* Maintain information on website clearly disclosing the amount of donations made.

FAQS

1. The laws can be confusing, what should a company look out for?
 - The CCV laws are generally meant to protect consumers and charities against misleading advertising and help assure promised donations are made.
 - Misrepresentation is the primary target in most states; accurate disclosure is key.

- Avoid vague statements in advertising, such as “all net profits,” “a portion of the purchase price,” or a “portion of the proceeds.”
2. How should a company handle maximum and minimum donations?
 - Be upfront; for example, Yoplait got in trouble for only disclosing the maximum donation under the lid.
 - Don’t set the maximum so low that it is reached well before the end of the promotion.
 - Don’t advertise after the maximum is met.
 - Don’t set the minimum so high that it cannot be reached.
 3. What if no purchase is required, but consumers must “like” the sponsor’s Facebook page to trigger a donation?
 - Non-purchase (“free”) consumer action generally would not trigger commercial co-venture laws.
 - A few states (AL, MA, MS) have ccv statutes drafted broadly enough to arguably not require an actual sale/purchase. And the IL charitable trust statute could conceivably apply, since the sponsor is holding money for the benefit of the charity. However, this may be more of a theoretical problem than a practical one.
 4. Can a company give the donations to its own foundation?
 - Generally, yes.
 - Foundation must register as a charity.
 - Company must comply with ccv laws.
 - Relationship must be at arms-length.
 - Foundation should avoid promoting company’s business.
 5. What if the company’s practice is to give all or a set percentage of its profits to charity?
 - Arguably, this is not a commercial coventure.

- Most state laws define a commercial co-venture as a “charitable sales *promotion or campaign*.”
6. What are other promotional ways to donate to charity without implicating commercial co-venture laws? And how can a company promote them?
- Providing a flat donation. Promote by a statement such as “X Company is a proud sponsor of Z Charity.” Avoid advertising to consumers that their purchase will affect the donation.
 - Accepting donations, such as putting a donation jar at checkout. Do not receive any consideration from the charity. Avoid advertising in conjunction with the sale of your product. Avoid any commingling of funds.
 - Sponsoring a charitable event. Do not receive any consideration from the charity. Must not be in conjunction with the sale of a product.
 - Having consumers vote for a charity for the company to donate to. Must be no consideration from charity, must not be in conjunction with a sale of your product, and must not require a purchase. Could be in the form of a sweepstakes.
7. What can a company do if a scandal with the charity is uncovered?
- For example, in 2016, allegations arose that the Wounded Warriors Project CEO and COO engaged in lavish spending of the charity’s money, which tarnished the charity’s reputation.
 - Investigate the charity beforehand. Websites like www.charitynavigator.com and www.charitywatch.org, and www.guidestar.org provide comprehensive research and financial information about charities.
 - Put an “out” in the contract. Include a provision in the ccv contract that the sponsor can terminate the contract/promotion if the

charity is engaged in or accused of various wrongdoing.

- Stop advertising the promotion. Without an out, a sponsor may have to continue the promotion to the contractual end date, but it may be able to lessen the impact of the scandal by reducing the advertising of the promotion.

The information contained in this report is for general reference purposes only and is not to be considered legal advice or opinion.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.