

JANUARY 19, 2016

New Year, New Ventures: Keeping Up With Charitable Sales Promotions

Readers may remember our blog post from 2012, [Are You in a Commercial Co-Venture?](#), in which we described common scenarios that trigger state requirements for charities and companies engaged in commercial co-ventures (also known as charitable sales promotions, or cause marketing). Over the years, we have seen the popularity of such ventures continue to rise, with state regulatory agencies challenged to monitor and enforce the rules applicable to commercial co-ventures.

A few significant changes have taken place since our 2012 post on this topic: Maine repealed its commercial co-venture statutes effective October 2013 (as reported [here](#)) and South Carolina introduced new registration requirements effective March 2014 (as reported [here](#)). In addition, in **late 2012**, the New York Attorney General issued **Five Best Practices for Transparent Cause Marketing**. While the issued statement did not constitute a legislative change to New York's existing statutes, it set forth the guidelines and principles by which the New York Attorney General would be monitoring promotions in its state.

The issuance of New York's Best Practices guidelines was particularly effective, garnering the attention of a number of national charities. Notably, the best practices include guidance on "maintaining transparency in social media" – a concept generally lacking in state regulatory regimes. In fact, to date, state regulatory agencies have largely not kept up with charities and businesses in accommodating and regulating the ever-changing and innovative landscape of commercial co-venture campaigns, many of which reside entirely on the Internet.

We offer the following tips to companies and charities considering, or already engaging in, a charitable sales promotion. This list is *not* comprehensive and, of course, does not constitute legal advice. For legal guidance on the rules and registration requirements applicable to your particular situation, we suggest you consult legal counsel.

Tips for companies and charities in commercial co-ventures:

- Consider whether you can avoid qualifying as a commercial co-venturer subject to state registration and reporting requirements by de-linking the contribution from the consumer purchase. For example, if a company's products solely state that the company is a "proud supporter of xyz charity," without implying that a consumer's use or purchase of the product triggers a donation, the promotion may be excluded from statutory definitions of a commercial co-venture. (Note, however, that public references to a charity's name may require the charity's advance consent.)

RELATED CATEGORIES

- IRS, FTB & Attorney General Controversies
- Public Charities
- Revenue Generating Activities

AUTHOR



A&C Alumni

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



Eric K. Gorovitz
Principal

- Start planning early! Most states regulating commercial co-ventures require that the promotion be registered in advance of its launch. This often means leaving at least several weeks to negotiate and execute a contract, obtain the appropriate signatures on the forms, and complete the filings.
- If the promotion is on the Internet, available to purchasers across the U.S., then the promotion may be subject to the rules of all states regulating commercial co-ventures, even if the company or charity is not otherwise operating there. A promotion can be limited to a specific geographic area, or can exclude certain states, by including an express statement to that effect.
- Registration and reporting requirements can apply to both charities and commercial co-venturers. If you're a charity benefiting from a promotion, don't assume that the company is completing all of the paperwork. In fact, many of the forms require counter-signature by the charity before submission (including Hawaii, Massachusetts, New Hampshire, and South Carolina). In addition, the charity itself may need to be registered in certain states where the promotion is occurring.
- For promotions in California, commercial co-venturer registration with the California Attorney General may be avoided if the company and charity/ies have a contract in place, in advance of the promotion, that includes certain specific obligations. (See [California Government Code section 12599.2\(b\)](#).)
- The Illinois Attorney General requires registration and reporting by charities and co-venturers, despite the fact that neither Illinois' statutes nor its existing forms explicitly refer to commercial co-ventures or charitable sales promotions.
- If you do have a commercial co-venture, refer to New York's [Five Best Practices for Transparent Cause Marketing](#) in planning and publicizing the promotion; these best practices are a good starting point for compliance.