

## REGULATION OF COMMERCIAL CO-VENTURES

### A. Introduction

Cause marketing or cause-related marketing refers to alliances between companies or brands and charitable organizations that generate both business and societal benefits. One of the most popular cause marketing alliances is a charitable sales promotion in which a business advertises that the purchase or use of certain goods or services will benefit a charitable organization or charitable purpose. A typical example is a sales promotion in which a company advertises that it will donate a certain dollar amount or percentage of the purchase price of every product sold to a specified charity. Companies that conduct these types of charitable sales promotions are regulated as “commercial co-venturers.”

Cause marketing activities are subject to state charitable solicitation laws, federal and state consumer protection laws, and federal tax laws. The regulations are aimed at protecting against potential consumer fraud or deception, and ensuring that the funds raised are in fact used for charitable purposes as advertised. There are more than 20 states that specifically regulate commercial co-venture relationships. These regulations require companies to comply with certain advertising disclosures, contract language requirements, and registration and/or campaign reporting requirements.

### B. State Registration Requirements

Commercial co-venturers are required to register in up to four states if the promotion is conducted in those states - Alabama, Massachusetts, South Carolina, and under certain circumstances, California. Two other states, Hawaii and Mississippi, do not require the commercial co-venturer to register, but the company must file a copy of the contract and a campaign report with the state. State registration fees range from \$50 to \$200 depending on the state. Registration expires on a specific date set by the state, and must be renewed annually. Alabama and Massachusetts also require the company to obtain a bond with a face value of \$10,000 and \$25,000, respectively. In addition, five of the states require the company to file a campaign report disclosing the results of the sales promotion. A schedule of commercial co-venturer registration and reporting requirements is attached as **Appendix A**.

Charities that are beneficiaries of a commercial co-venture promotion are generally required to register in most states where the promotion is taking place to the extent the state has a charity registration requirement. In addition, several states require the charity to file contracts and campaign reports, or disclose the relationship in its registration renewals. A schedule of charity state reporting and disclosure requirements related to their commercial co-venture relationships is attached as **Appendix B**.

### C. Contract Requirements

Approximately 20 states require the commercial co-venturer to obtain the written consent of the non-profit organization whose name will be used during the sales promotion. In most states, a written contract with specific provisions is required.

The following list represents the most commonly required provisions that must be included in commercial co-venture agreements:

- (i) The goods or services to be offered to the public as part of the promotion;

- (ii) The geographic territory of the promotion;
- (iii) The actual or estimated dollar amount or percentage of the purchase price or sales that the charity will receive;
- (iv) The term (start and end dates) of the promotion;
- (v) The provision of a final accounting to the charity; and
- (vi) The date(s) when funds will be transferred to the charity.

**D. Advertising and Disclosure Requirements**

Commercial co-venturers are required to include certain advertising disclosures as part of their charitable sales promotions. State charity and consumer protection regulators are particularly concerned about ensuring that purchasers have sufficient information to understand how their purchases will benefit charity. The most important and common disclosure requirement is that advertisements must include the percentage or dollar amount of the purchase price that will be donated to the charitable organization. For example, vague language like “a portion of proceeds from the sale of each product will go to X charity” would not comply with the disclosure requirements. In addition, to meet the best practices standards of charity watchdog agencies<sup>1</sup> and state charity regulators<sup>2</sup>, all advertising disclosures should also include the effective dates of the promotion, and any applicable maximum or guaranteed minimum donation (e.g., “10% of the purchase price of each unit sold, up to \$500,000” or “\$1 will be donated to X charity for each unit sold, with a minimum guaranteed donation of \$100,000”).

Charities are generally limited in their ability to be actively involved in charitable sales promotions. This limitation is due to federal income tax rules relating to “unrelated business income.”<sup>3</sup> In the cause marketing context, income received from a business (even if it is described as a donation or royalty) can be subject to federal income tax if it is received in exchange for services from the charity. Promotional activities carried on by a charity may be viewed as advertising or marketing services provided in exchange for a payment. As a result, many charities limit their involvement to providing a trademark license, providing acknowledgment or recognition of the company in their public communications, and receiving the donation generated by the promotion.

**The information provided in this document does not constitute legal advice, and is not intended to substitute for legal counsel.**

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<sup>1</sup> See Better Business Bureau Wise Giving Alliance’s Standards for Charity Accountability, Standard #19, available at <http://www.bbb.org/us/standards-for-charity-accountability/>. Charities that seek to be evaluated for compliance with all 20 charity accountability standards must meet this standard regarding cause marketing advertising disclosures.

<sup>2</sup> See New York Attorney General Charities Bureau’s “Five Best Practices for Transparent Cause Marketing,” available at [http://www.charitiesnys.com/cause\\_marketing.jsp](http://www.charitiesnys.com/cause_marketing.jsp) (published on October 18, 2012); “What’s In a Nonprofit’s Name?”, a multi-state report on nonprofit product marketing, available at [http://www.atg.state.vt.us/assets/files/Whats%20in%20a%20Name\\_report-nonprofit\\_mkting.pdf](http://www.atg.state.vt.us/assets/files/Whats%20in%20a%20Name_report-nonprofit_mkting.pdf) (issued in April 1999).

While these guidelines do not have the force of law, they reflect some of the state charity regulators’ key concerns regarding cause marketing/commercial co-venture promotions.

<sup>3</sup> “Unrelated business income” is defined, under the Internal Revenue Code, as income generated from a trade or business that is regularly carried on, and that is not substantially related to furthering the ex empt purpose of a tax-exempt organization.

## APPENDIX A

### Commercial Co-venturer Registration and Reporting Requirements

State	Registration Fees & Contract Filing	Bond Amount	Registration Expires	Campaign Reporting
Alabama	<p>\$100 payable to the Alabama Attorney General</p> <p>A copy of each contract must be filed within ten (10) days after its execution, and at least 15 days prior to any performance under the contract.</p>	\$10,000	September 30	Within 90 days after termination of the contract
California	<p>\$350 payable to the CA Attorney General's Registry of Charitable Trusts</p> <p><i>Note: This registration is optional. The commercial co-venturer is not required to register if it complies with certain contract and related compliance requirements, including transfers of payments every 90 days.</i></p>	n/a	January 15	By January 30 for any promotion that was active during the preceding calendar year
Hawaii	No registration or filing fee required, but a copy of each contract must be filed not less than ten (10) days prior to the start of the promotion within the state.	n/a	n/a	None
Massachusetts	<p>\$200 payable to the Commonwealth of Massachusetts</p> <p>A copy of each contract must be filed within ten (10) days after execution.</p>	\$25,000	December 31	By February 28 for any promotion that was active during the preceding calendar year
Mississippi	No registration or filing fee required, but a copy of each contract must be filed no later than seven (7) days prior to the start of the promotion within the state.	n/a	n/a	No later than 30 days after the conclusion of the promotion or within 30 days of the anniversary of the promotion start date (for multi-year contracts)
South Carolina	<p>\$50 payable to the South Carolina Secretary of State</p> <p>In addition, a copy of each agreement must be filed at least ten (10) days prior to the start of the promotion within the state.</p>	n/a	Anniversary of initial registration	A Joint Financial Report for a Solicitation Campaign must be filed within 90 days after the conclusion of the promotion, or by the anniversary of the promotion start date (for multi-year contracts).

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## APPENDIX B

### Charity State Reporting and Contract Filing Obligations For Commercial Co-Venture Promotions

State	Contract Filing or Notification Requirement	Contract Filing/Notification Deadline	Campaign Reporting
Arkansas	Copy of the contract along with a contract checklist (state form) signed & notarized by a charity representative.	Before the promotion begins in the state	The organization must provide a list of current commercial co-venture campaigns when submitting its registration renewal materials.
Colorado	Notification only	At registration renewal	None
Connecticut	Copy of the contract	At least 10 days before the promotion begins in the state	None
Florida	Notification only	At registration renewal	None
Massachusetts	Copy of contract	At registration renewal	None
New Hampshire	Notice of a Charitable Sales Promotion (state form) signed by both the charity and the company  <i>Note: The charity is not required to submit the actual contract unless requested by the state.</i>	Before the promotion begins in the state	None
New Jersey	Copy of the contract, along with \$30 contract filing fee payable to “ <i>New Jersey Division of Consumer Affairs.</i> ”	At least 10 days before the promotion begins in the state	Report of Charitable Sales Promotion (state form), along with a \$10 filing fee. The report and filing fee must be submitted within 40 days after the expiration of the contract. For campaigns lasting longer than 12 months, an interim report must be filed within 40 days of the end of the organization’s fiscal year.
New York	Notification only	At registration renewal	None
North Carolina	Notification only	At registration renewal	Must report gross amount received from commercial co-venturer in registration renewal.
Ohio	Notification only	At registration renewal	None
Pennsylvania	Notification only	At registration renewal	None
South Carolina	Notification only	At registration renewal	None
Tennessee	Copy of the contract	At registration renewal	None
Utah	Notification only	At registration renewal	None

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