

**CAUSE RELATED MARKETING
2008 NONPROFIT ALLIANCE DEVELOPMENT
LEADERSHIP SUMMIT
CHICAGO, ILLINOIS**

Regulation of Cause Marketing

1. INTRODUCTION

a. What is cause marketing?

- i. Cause marketing (also known as cause related marketing *or sometime commercial co-ventures*) is a commercial marketing partnership between a business and a nonprofit entity to market an image, product or service linked to a social cause or issue, for mutual benefit.
- ii. The most typical example is an advertisement stating that a company will contribute a certain dollar or percentage amount of each product purchased to a specified charity but the permutations of cause related marketing are endless.

2. REGULATION

A. Commercial Co-venturers

- a. Many states regulate cause marketing relationships for many of the same reasons that charitable solicitation activity is regulated – to protect against potential consumer fraud or deception, and to ensure that the funds raised are in fact used for charitable purposes as advertised.
- b. Commercial co-venturers vs. Professional Solicitor – It should be noted that a commercial co-venturer is different from a professional solicitor. Commercial co-venturers, unlike professional solicitors, are not regularly engaged in charitable fundraising, but use the name of a charitable organization as part of a sales promotion in which it agrees to make charitable donations based on the sales of its products.

B. Statutory Framework

a. Consumer fraud statutes

1. Federal and state consumer protection statutes are meant to protect consumers from unfair or deceptive practices, and often increase the legal remedies available by allowing either the consumer or the regulatory authority to bring a legal action against a company who is engaging in deceptive advertising. At the state level, Attorneys General regulate consumer protection, while the Federal Trade Commission is the federal regulatory agency charged with protecting consumers. Under federal and state law, an ad is unlawful if it tends to mislead or deceive, even if it does not actually mislead or deceive anyone. The legal standard is whether the overall impression created by the ad is deceptive or misleading, not whether the ad is technically truthful.

b. Registration and reporting requirements

1. Commercial co-venturer regulation includes many of the same requirements under the different states' laws. However, several states include unique conditions and requirements. When a national campaign is being conducted, commercial co-venturers must comply with all of the state's regulations, which is no simple task.
2. Four states, Maine, Massachusetts, Alabama and Hawaii currently require commercial co-venturers to register prior to conducting a co-venture. About 20 other states regulate such campaigns but do not require registration.
3. Registration typically includes the filing of a registration statement, payment of a filing fee, and posting of a bond (except in Hawaii).

4. Connecticut Law

Connecticut is a good example of a state that regulates this activity but does not require registration. Its statute states:

An authorized representative of the charitable organization and the commercial coventurer shall sign such agreement and the terms of such agreement shall include the following: (1) The goods or services to be offered to the public; (2) the geographic area where, and the starting and final date when, such offering is to be made; (3) the manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization; (4) a provision for a final accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date when it is to be made; and (5) the date when and the manner in which the benefit is to be conferred on the charitable organization.

(b) A commercial coventurer shall keep the final accounting for each charitable sales promotion for three years after the final accounting date and such accounting shall be available to the department upon request.

(c) A commercial coventurer shall disclose in each advertisement for a charitable sales promotion the amount per unit of goods or services purchased or used that is to benefit the charitable organization or purpose. Such amount may be expressed as a dollar amount or as a percentage of the value of the goods or services purchased or used.

5. California requires that the designated funds be transferred to the charity at certain intervals throughout the campaign.
6. New York requires that, for any sales promotions lasting longer than one year, the commercial co-venturer must provide the charity with an interim report, at least annually. New York also allows the charity to cancel a commercial co-venture contract at any time and for any reason by giving notice that it does not intend to be bound by the contract, and the co-venturer must discontinue the campaign within fifteen days of cancellation. It should be noted that New York has a statutory registration and bonding requirement, but it is specifically not enforced by the Attorney General. Moreover, any registrations they receive are not accepted.

7. New Jersey requires that every commercial co-venture must be pursuant to a written contract, which must contain a provision clearly and conspicuously stating that the parties are subject to the Charitable Registration and Investigation Act, and any rules adopted pursuant to the Act. The charity must file the contract at least 10 days prior to the start of the marketing campaign. At the conclusion of the campaign, the co-venturer must certify the amount of funds raised during the charitable sales promotion, and the amount remitted to the charity in connection with the promotion, which the charity must submit to the state, along with a copy of each advertisement or marketing material used as part of the promotion. The promotional advertisements must disclose the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose.

ii. **Charity obligations** Like New Jersey, some states, including Mississippi, Oklahoma, and Pennsylvania, do not directly regulate the commercial co-venturer, but do require charities to provide the state with certain information relating to commercial co-ventures. These may include providing the name and address of any commercial co-venturer and a description of the campaign, specifying the payment arrangement, and filing a copy of the contract.

iii. **The BBB Wise Giving Alliance Standard 19**

The Better Business Bureau Wise Giving Alliance has a non-binding standard on the subject. It states the promotion should clearly disclose how the charity benefits from the sale of products or services (i.e., cause-related marketing).

The promotions should disclose, at the point of solicitation:

1. The actual or anticipated portion of the purchase price that will benefit the charity (e.g., 5 cents will be contributed to ABC charity for every xyz company product sold),
2. The duration of the campaign (e.g., the month of October),
3. Any maximum or guaranteed minimum contribution amount (e.g., up to a maximum of \$200,000).