

# Play strictly by rules in charity co-ventures



By Bart A. Lazar

What could be bad about selling a product and then donating some money to charity? Hopefully, nothing. However, if a marketer is going to tout the donation as part of its marketing of a product or service, it is important that a number of rules be followed so that the public is not misled

about the donation and the charity actually gets the donation promised. While good companies would do this as a matter of course, the actions of a few bad actors have led many states to take a closer look at commercial ventures between a marketer and a charity that are intended to benefit the charity. As a result, more and more state laws have been passed that impose specific legal requirements on how to run what is legally called a commercial co-venture (but for the purposes of this article I will call the relationship a partnership, and each party a partner) with a charity.

When are you a partner with a charity? Basically this occurs when any profit-making enterprise (other than a professional fundraiser) advertises that the purchase or use of goods, services, entertainment or any other thing will benefit a charitable organization. Typically, this would arise

## MARKETING AND THE LAW

from an agreement between a not-for-profit organization and a profit-making organization that some donation will be made, or some portion of proceeds of the sale of an item will be donated to the charity.

There are at least three main benefits to a partnership for charity. First, the marketer is able to associate its goods or services with creating positive social impact. Thus, the marketer intends to build brand awareness within the same market segments that support the charity's social impact. Second, the marketer intends to foster overall goodwill for the company as being a solid, socially conscious citizen of the world. Third, as there is no such thing as pure altruism in the world, the marketer intends to make more money from the sale of its goods or services into this target market.

Of course, from the standpoint of the not-for-profit organization, it stands to benefit in a variety of ways as well, including increased public awareness of the organi-

zation and its goals, association with a socially conscious organization, and finally, cold hard cash.

While both organizations need to make sure that they are dealing with parties that can be trusted to accomplish the above goals, state laws enforced primarily by the state attorney generals are intended to ensure that the public is not misled by the partnership. Most of the requirements of state law are simply common sense, but it is important to make sure that you are complying with these laws if you engage in a cause marketing effort.

The first thing to know is that some state laws require that a written contract exist between the partners and also that specific provisions be included in that contract. Some of these provisions include notification to the charity of its right to cancel, audit provisions requiring the marketer to maintain full books and records relating to the promotion and permitting the charity to review the marketer's books and records, obligations to submit financial reports to the charity, and explicit statements regarding the financial terms of the arrangement and how the charity will get paid. If you don't have such a written agreement, the marketer will be violating the law or may be required to register the agreement or partnership with the attorney general.

Finally, many states require specific statements to be made in advertising the sales of products that benefit a charitable organization. For example, under New York law, *all advertising* for a sale of goods, services, entertainment or any other thing of value that will benefit a charitable organization must state the anticipated portion of the sales price, gross proceeds or contribution per purchase or other contribution that the charitable organization is to receive. In addition to advertising, Web sites and or packaging for products promoting the charitable donation may need to have appropriate disclosures. Other states even require the marketer to post a bond with the state in order to ensure that the minimum charitable contribution is made.

Following these laws is pretty important because the charity must also file reports with many of the states identifying its commercial partners and specify whether the charity received the financial reports and payments it was supposed to receive. If the

laws are not followed, a state attorney general could prosecute the marketer. Such a prosecution could result in fines or even, in cases of willful or egregious violations, some form of jail sentence, but will certainly result in negating the goodwill and marketing benefit derived from the cause marketing partnership in the first place.

Finally, in addition to the requirements imposed by law, there are still some practical, business aspects to the deal. Both parties should recognize that a commercial partnership agreement is, at its essence, a cross-licensing agreement that permits both parties to use the other parties' trademarks. Therefore, both the marketer and charity should not be blinded by the potential financial benefits and should do some level of due diligence regarding the other party to make sure that the other party is trustworthy and will not associate the licensed brand with an inappropriate product, service or event. The written agreement between the marketer and charity should

also have specific provisions that would typically be put into a trademark license, which would include among other things, specifying which marks may be used, how they may be used, what types of goods the marks may be used on, the term and geographic scope of use, the method for approving uses and whether the marks may be used on promotional products.

While many charities are knowledgeable about commercial co-venturing laws, it would be a mistake for the marketer to rely on the charities to interpret these laws. It behooves any marketer considering a commercial partnership with a charity or to benefit a charity to learn the rules that apply to the partnership during the planning stages for the promotion to make certain that the project is budgeted properly, the right agreement is used, and the proper advertising and promotion materials are implemented. In this way the marketer can ensure that it gets the anticipated boost for the marketer and its products or services—and not a state attorney general investigation. ■

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**Both the marketer and charity should not be blinded by the benefits and should do some level of due diligence.**

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