

Charitable Sales Promotions

A.K.A., Commercial Co-Venturer (CCV) Promotions

A General Overview

Introduction

No good deed goes unpunished, so the saying goes. Commercial for-profit entities that want to engage in fund-raising efforts on behalf of nonprofit charities must be careful to keep on the right side of the law.

This newsletter provides a general overview of the processes and steps involved in creating a successful commercial co-venture.

Step One: Know what you want!

Promotions are fact driven. Accordingly, it's imperative to outline with your charity the type of co-venture promotion you want to showcase. Specifics of your vision should include the states in which you want to run the promotion, the accounting method, any contests or sweepstakes elements involved, the length of time of the promotion, and the fulfillment process. Since some states have specific requirements that must be contained in your agreement, any contract negotiations should include the ability to attach a rider.

CCV Basics

The classic commercial co-venture (CCV) promotion is defined, generally, as a commercial entity (i.e., you, also called a commercial co-venturer) representing to prospective purchasers that if they attend an event or purchase a service or product, a specified portion of the sales price, a certain sum of money or other thing of value will be donated to or will benefit a named charitable organization. Such "commercial co-venturer" promotions are subject to state laws in roughly 25 states, depending on the specific facts of your promotion.

Unfortunately, the state laws that apply to such CCVs are not harmonized, so each state must be treated separately.

A number of states require some form of registration and/or bonding for entities that co-venture with a charity or who, for a fee, raise money or coordinate with a charity. Some states mandate the inclusion of specific provisions in the co-venturing contract and the filing of the contract with the state. Additional requirements include mandatory disclosures in advertising materials, filing of periodic reports and of a full accounting upon completion of the promotion, and retention of promotion records for a specified period of time



In addition to the foregoing laws that affect the CCV, some states require affirmative acts on the part of the charitable organization. CCVs must, therefore, choose their charitable partners with care, since these filings are the responsibility of the charitable organization, but may affect the status of the CCV.

Take Time To Save Time

The lack of harmonization of requirements state-by-state has made the bonding and registration process time consuming and somewhat labor intensive. Accordingly, CCVs need to begin the registration process early and establish positive and effective communication lines with the charity to insure the necessary agreement and reporting/accounting systems are in place.

Cobalt assists CCVs in each step, including as a first step, providing the for-profit with a detailed checklist of information and documents you will need to provide us in order to get started. Please do not hesitate to contact us if you have any questions moving forward.

Frequently Asked Questions

How does the law define a “commercial co-venturer”?

As noted earlier, a CCV is a commercial for-profit entity that, in conjunction with, or on behalf of a specific charity, advertises that the purchase or use of its products, services (or event) will benefit a charitable organization in some way. Some states define the concept somewhat differently but this is the standard, most commonly used definition.

This type of promotion can take different forms, so long as a portion of funds goes to the charitable entity. For example, a benefit can be inferred for each in-store or online sale of specific items, or each Facebook “like.” Popular examples of buy-for-charity include the “Every Lid Matters” Yoplait campaign that benefits the Susan G. Komen Cancer Foundation, and the “Gap Red” campaign which raises money to fight AIDS. In these examples, Gap and Yoplait are CCVs.

What do we need to do to comply with commercial co-venturing laws?

State laws vary widely. You will want to comply with the stricter state laws. Some of the basic requirements include:

- State registrations, with payment of a fee and, in currently three states, posting of a bond (up to \$25,000 in Massachusetts);
- A written contract between the commercial co-venturer and the charity that must contain certain provisions;
- Periodic reporting back to the charity;
- Financial reporting to some states (at the end of the promotion in most states except in Massachusetts and Illinois, which require a pro-rated financial report be filed annually);

- Record-keeping requirements;
- Mandatory disclosures on packaging, in advertising and at the point of sale;
- Prompt payment of the amount disclosed to the charity.

The foregoing represent examples of some of the compliance requirements. Cobalt handles all bonding and registration on behalf of the CCV, and drafts appropriate contract riders as necessary.

What states require registration and what are the filing requirements?

Roughly 11 states currently require some form of registration of commercial co-venturers. This number could change as states implement new requirements or change their existing CCV laws. The specifics of registration vary from state to state. Some states have specific commercial co-venturer registration forms, which must be signed and sometimes notarized by the CCV and/or the nonprofit (for example, Alabama, California, Hawaii, Massachusetts and Illinois); others simply require filing of the contract between the CCV and the charity, together with a filing fee (for example, New Hampshire and Mississippi).

Typically, registration is done on an annual basis and must be renewed. Some states, like Massachusetts, have extensive requirements; others merely require the filing of a variety of documents (such as the CCV contract, Articles of Incorporation and list of fictitious business names).

How long in advance should we register? Are there deadlines?

Registration must be done in most states no later than 10 days prior to the promotion start date. The contract with the charity must generally be signed at least 15 days before the promotion starts. Because bonding, notarizations, filings and approvals are requirements before the promotion starts we generally require the promotion information and documents, including the signed contract with the charity, a minimum of 60 days prior to the commencement date of the promotion. That said, we may be able to register the promotion on a shorter timeline.

Finally, certain reports, including detailed financial reports, must be filed within a certain number of days following the end of the promotion or the end of the calendar year when the promotion was held. We remind clients of these deadlines as they get closer and prepare all necessary forms.

What states require posting of a bond?

Alabama (\$10,000) and Massachusetts (\$25,000). Maine used to, but no longer, requires bonding and registration, as of the date of this newsletter.

What information does Cobalt need to get started?

To start, we will ask you to fill out our standard commercial co-venturer intake form and provide us with specifics about your entity, the promotion and the charity. We will need copies of certain documents (such as the CCV's contract with the charity). Because every promotion is different and state laws are subject to change and interpretation, we may ask you for additional information as we go forward.

Should we file in every state where registration is required?

Registration is required in all states where the CCV anticipates advertising and/or running the promotion. Practically speaking, and particularly if the CCV has an Internet presence, it will want to register in all states for any promotion advertised online and soliciting participation from users located anywhere in the US. That said, certain promotion only need to be registered in one state (for example, a sporting event in San Francisco for which ticket sales benefit a nonprofit only requires registration in California).

What happens if we don't comply with these regulations?

Penalties vary, from civil fines (\$1,000 to \$10,000 in California) to criminal penalties. The commercial entity and/or the charitable organization also risk losing the ability to solicit funds in the state. State regulators have been paying increasing attention to charitable sales promotion. Enforcement is spotty, and the laws in most states are too new to really determine if there is a pattern. We have seen increasing enforcement relating to insufficient advertising disclosures, as well as usage of a nonprofit's name without its knowledge or permission.

Is there one central agency that can handle all these filings?

Not at this time.

What records does the CCV need to keep and for how long?

The CCV should keep complete and accurate records pertaining to the promotion for at least 3 years after the promotion ends. They are subject to inspection by some state regulators.

Is there any information we must include in our ads promoting the charitable sale?

Yes. Generally, the CCV must provide clear, complete and truthful information to consumers about the promotion. Some states require minimum disclosures about the promotion and the charitable purpose anywhere the promotion is run or advertised (point of sale, web site, packaging, etc.). They include, but are not limited to:

- Name, address and phone number of charity;
- Amount or percentage per unit of good or service that will benefit the charity; ex: "10 cents per bottle cap mailed."
- Nature of charitable activities that funds will support;
- That consumer may request information from the NY Attorney General's Office, plus an address where requests can be sent.

What does the CCV's contract with the nonprofit need to say?

Some states require mandatory terms, including, to cite only a few:

- Contract must be signed by two officers of the charity;
- Charitable purpose;
- Goods/services to be offered;
- Geographic area;
- Estimated number of units to be sold;
- Date and manner of payment to charity;
- Maximum dollar amount to benefit charity, if any;

What needs to be done after the promotion ends?

There are a number of reporting requirements after the promotion ends, such as closing statements and annual financial reports, all of which must be forwarded to requesting states.

Contact Information

Our goal is to help you manage your promotion. Feel free to contact us any time.

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