



# Cause-Related Marketing by For-Profit Companies Checklist

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A Checklist identifying key issues and setting out best practices that a for-profit company should consider when collaborating with a charity on a cause marketing campaign promoting the sale of the for-profit company's goods or services and the charitable cause that will benefit from these sales.

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This Checklist provides an overview of state requirements and sets out practical tips that for-profit companies should be aware of when engaging in a cause marketing campaign as a commercial co-venturer. Many states regulate cause marketing ventures to protect consumers from false or misleading sales promotions and ensure that the designated charity actually receives its share of the proceeds that the commercial co-venturer commits to donating.

While some state laws governing "professional fundraisers" may be broad enough to impose additional restrictions on commercial co-venturers, those laws are outside the scope of this Checklist. Commercial co-venturers should also ensure to comply with generally applicable advertising and marketing laws when engaging in a cause marketing campaign.

## STATE REGISTRATION REQUIREMENTS

### Filing

Several states, including Maine, Massachusetts and Alabama, require commercial co-venturers to register for a license before offering for sale any cause-marketed products or services. Licenses are typically valid for up to one year. A commercial co-venturer must file for a renewal if its license expires before the conclusion of the cause marketing campaign.

### Completeness

Registration materials should be complete when filed. States that regulate cause marketing generally do not permit commercial co-venturers to file partially completed registration materials that would be supplemented at a later date.

### Fees

Registration fees vary by state, but they generally do not exceed \$500. For example, Alabama charges a \$100 filing fee, while Maine charges \$250 (\$50 for the application fee and a \$200 license fee). A commercial co-venturer may also need to pay a fee to renew its license.

### Bond Posting

Alabama, Maine and Massachusetts require commercial co-venturers to post a bond when registering. The purpose of the bond is to ensure that the commercial co-venturer complies with all applicable statutory and regulatory requirements, and makes a full accounting and payment of all charitable funds that come into the commercial co-venturer's possession. The amount required to be posted varies by state.

### Reporting

Several states require commercial co-venturers to file annual activity reports detailing the total dollar amounts:

- Raised from public contributions.
- Disbursed to the charity.
- Retained by the commercial co-venturer.

## ADVERTISING DISCLOSURES

Each cause marketing advertisement should include the following information in at least ten-point type, keeping in mind that some states may impose additional disclosure requirements.



## Party Information

- Charity's name, address and phone number.
- Commercial co-venturer's name.

## Promotion Description

- A description of the charitable purpose of the promotion.
- The dates of the promotion.
- Any other material terms or conditions for the promotion.

## Financial Information

- The amount of each purchase that will benefit the charity.
- The percentage of each purchase that is tax deductible.
- Any limit on the commercial co-venturer's matching contribution.

## CONTRACTUAL PROVISIONS

Several states require the commercial co-venturer and charity to execute a written contract and further require the commercial co-venturer to file an executed copy with the state. In addition, a few states require that the contract contain specific provisions. Examples include:

- Statement of the name, address and telephone number of the commercial co-venturer and charitable organization.
- Statement of the charitable purposes for which the cause marketing campaign will be conducted.
- Geographic area where the promotion will be offered.
- Date the campaign will begin and end.
- Statement of the estimated number of units to be sold.
- Statement of any guaranteed minimum and/or maximum percentage of gross receipts to be remitted to the charity, excluding any amount that the charity must pay for fundraising costs, if any.
- Description of how the commercial co-venturer's contribution to the charity as a result of this campaign will be calculated (for example, a fixed dollar amount per sale).

- Description of how the commercial co-venturer will distribute the contribution to the charity and the anticipated date(s) for the distribution.
- Requirement that the commercial co-venturer will provide a final accounting, on a per unit basis, to the charity and the date when the accounting is due.
- Representation that the charity provides express permission for the commercial co-venturer's use of the charity's name and any other mark owned by the charity.
- Requirement that the commercial co-venturer will disclose in its advertising the dollar amount or percent per unit that will benefit the charitable organization.

## RECORDKEEPING

### Retention

State law may require commercial co-venturers to retain a copy of the contract and a financial statement reflecting the results of the campaign, typically for a period of three years after the expiration of the commercial co-venturer's license or the conclusion of the campaign, as applicable.

### Filing

States that regulate cause marketing generally require the commercial co-venturer to provide an accounting statement to the charity and file a copy with the appropriate state regulatory agency within a fixed period of time following the conclusion of the campaign.

## PRACTICAL POINTERS

While not required by law, a commercial co-venturer should take the following steps to more effectively manage its relationship with the charity and maximize the promotional value of the cause marketing campaign.

### Timing

- Allow a few weeks to complete and file the state registration forms. Some states request detailed information or require numerous signatures that could take some time to obtain.
- It can take 30 or more days for the applicable state regulatory agency to complete its review of the commercial co-venturer's application and issue a



license, even if the applicable regulatory agency allows applicants to request an expedited registration review.

- Confirm that the charitable organization has met all applicable legal requirements to be classified as a charity. For example, if the charity is not properly registered, the commercial co-venturer may be prohibited from selling products or providing services that will benefit the charity.
- Prepare a chart of deadlines and renewal requirements for state registrations and bonds to more effectively manage ongoing regulatory obligations.

### Contractual

- Even if not required by state law, enter into a written contract that defines the terms of the relationship and the responsibilities of each party, and includes the provisions identified in *Contractual Provisions*.
- Include representations that the charity is currently in good standing as a charitable organization under applicable federal and state law and will comply with all state charitable solicitation statutes and regulations during the term of the agreement.
- Describe the specific services, marketing materials, retailer incentives/promotions and publicity that each entity will provide.
- Draft the contract to allow some marketing flexibility. Marketers often want to change the products or services, or how they sell these products or services, once the campaign begins. The parties can more easily incorporate these changes if the contract is structured accordingly.
- Address the terms under which each party may use the other party's name, trademarks or other intellectual property in connection with the campaign.

- Consider negotiating exclusive sponsorship rights for the commercial co-venturer where appropriate.

### Operational

- Develop a standard set of disclosures that must appear in all advertising and avoid any variation.
- Ensure that consumers can clearly see all of the material terms on point-of-purchase materials and packaging before they purchase the product or service. For example, any limit on the amount of money that will go toward the charitable cause should not appear inside the packaging or under a sealed lid.
- Avoid making representations that the commercial co-venturer is soliciting from consumers or fundraising on behalf of the charitable organization.
- If the product or service is normally sold without the charitable benefit, avoid increasing the price of the product or service when selling it with the charitable benefit.
- Ensure that the charity's share of the proceeds are promptly paid to the charity and in the promised amount. Sometimes commercial co-venturers become so involved in fulfilling orders or promoting their products or services that the act of contributing to the charity does not take priority.
- Set up verifiable accounting and inventory tracking systems to:
  - maintain accurate, up-to-date sales records;
  - prepare transmittals to be made to the charity; and
  - prepare financial reports for states that require them.