

NAD Reviews Charitable Donation Claims

Gonzalo E. Mon

March 3, 2022

**LISTEN TO THIS BLOG POST ON THE
AD LAW ACCESS PODCAST**

In recent years, more companies have been willing to take public positions on social issues and to promote certain causes. Different types of promotions raise different legal issues. For example, if a company advertises that a purchase will lead to a donation to a charity, that could trigger requirements under commercial co-venture laws. (Listen to [this podcast](#) for more details.) Other types of promotions – such as simply announcing a charitable donation – trigger fewer requirements.

Whatever path a company takes, though, it must make sure that it actually does what it says. Although state regulators are usually the ones who pay most attention to these campaigns to ensure that companies comply with the law, two decisions issued by NAD this week signal that the self-regulatory body will also be monitoring these types of campaigns and holding companies accountable.

In one case, NAD requested substantiation from DoorDash for its claims that: “We are donating \$1 million, with \$500,000 going to Black Lives Matter and \$500,000 to create a fund to be directed by the Black@DoorDash ERG (Employee Resource Group) towards state and local organizations.” Based on documentation provided by DoorDash that included invoices and acknowledgement letters, NAD determined that the challenged advertising claim was substantiated.

In the other case, NAD requested substantiation from Niantic for various claims, including that it would donate a minimum of \$5 million from proceeds from Pokémon GO Fest 2020 ticket sales, half of which would be used to fund new projects from Black gaming and AR creators, and half of which would go to nonprofit organizations that help local communities rebuild. Based on evidence provided by Niantic, NAD determined that the challenged advertising claims were substantiated.

These cases don’t break new ground and simply highlight the importance of making good on your promises. But as companies continue charitable marketing campaigns – something we expect to see more of, in light of Russia’s invasion of Ukraine – it’s important to keep in mind that there are various entities who will hold you accountable. Make sure to keep good records of your activities so that you can quickly address any inquiries.

(Speaking of Russia, make sure you check out the [ongoing guidance](#) being published by our Export and Sanctions Team at Kelley Drye.)