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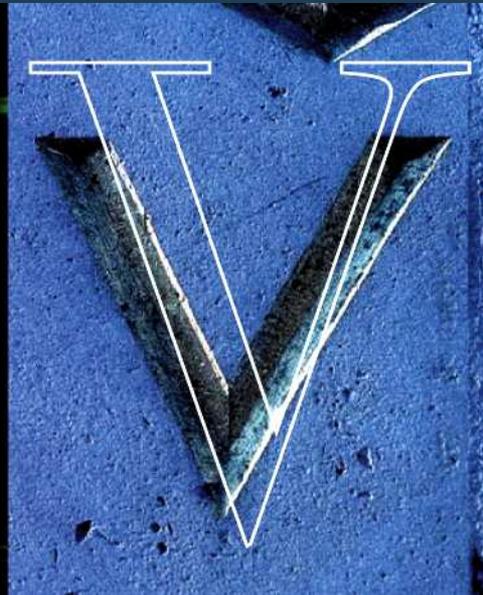
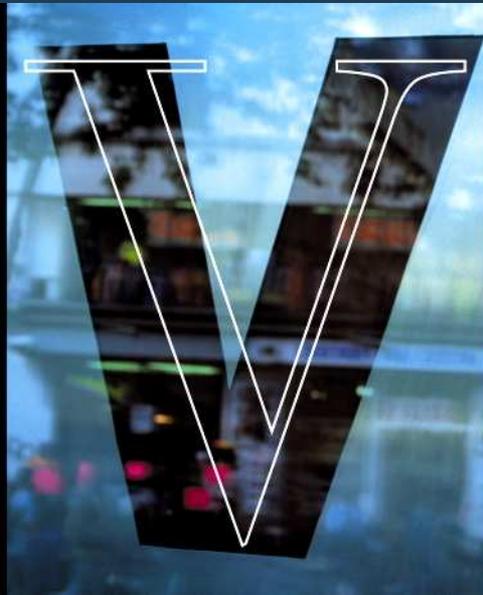
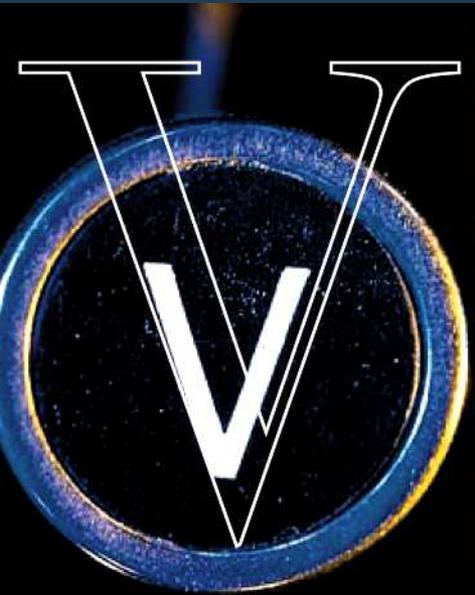
ACC Association of
Corporate Counsel

Nonprofit Organizations Committee Legal Quick Hit: Nonprofit Postal Rates: How to Get Them, How to Use Them

MODERATOR: JEFFREY S. TENENBAUM, ESQ.

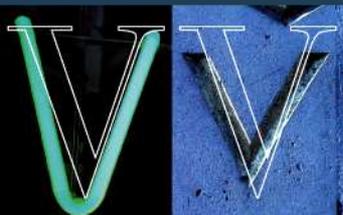
TUESDAY, NOVEMBER 13, 2012

PRESENTER: DAVID M. LEVY, ESQ.



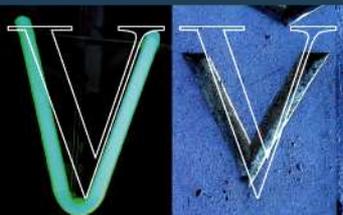
Contents

- Organizational eligibility
- Mailer ID requirements
- Restrictions on personal information
- Restrictions on mailing products
- Advertising restrictions



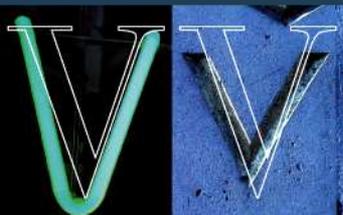
Organizational Eligibility: Standards (1)

- Must be nonprofit
 - Not organized for profit
 - None of organization's net income benefits any individual or private stockholder
- Must be organized and operated primarily for qualifying nonprofit purpose(s): religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans, fraternal



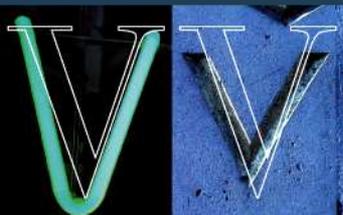
Organizational Eligibility: Standards (2)

- Issue: professional associations
 - Postal officials often claim that professional associations (e.g., medical and bar associations) not tax exempt as 501(c)(3)s are ineligible for NP postal rates
 - In fact, 501(c)(6) professional associations are eligible for NP postal rates if organized and operated primarily for educational, scientific, or philanthropic purposes
 - These include continuing education programs, publications, standards development, and charitable or free services to the public



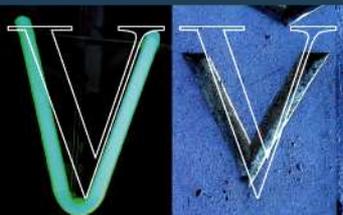
Permit Application Procedures

- Original mailing office
 - PS Form 3624
 - Formative papers (articles of incorporation, bylaws, etc.)
 - Evidence of nonprofit status (IRS exemption letter or financial statement certified by independent auditor)
 - Documentation of qualifying activities, and amounts spent on them
- Additional mailing office (if organization already has nonprofit permit)
 - PS Form 3623
 - Letter of request



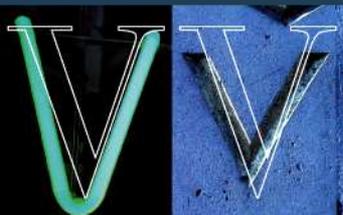
Mailer Identification Requirement

- Basic rule: official name of organization must appear on mailpiece and return address of envelope
- D/B/A or A/K/A name
 - May be used in addition to official name
 - USPS authorization required to use D/B/A or A/K/A name instead of official name on mailpiece and return address
 - The USPS will require certification from organization and state of incorporation before granting such authorization



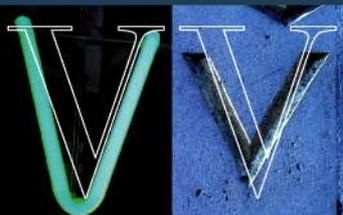
Restrictions on Personal Information About Addressee (1)

- Mailpieces with “personal information” may not be entered as Standard Mail—even commercial Standard Mail—unless all of the following conditions are met:
 - The mailpiece contains explicit advertising for a product or service for sale or lease or an explicit solicitation for a donation;
 - All of the personal information is directly related to the advertising or solicitation; and
 - The exclusive reason for inclusion of all the personal information is to support the advertising or solicitation in the mailpiece.



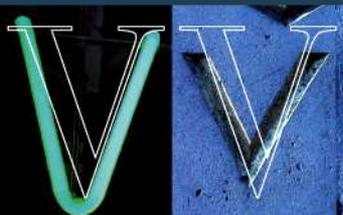
Restrictions on Personal Information About Addressee (2)

- Personal information = “any information specific to the addressee” other than:
 - The name and mailing address of the addressee,
 - The date of the correspondence,
 - The name and address of the sender, and
 - The name, address, and alphanumeric information that constitutes the sender’s internal routing numbers



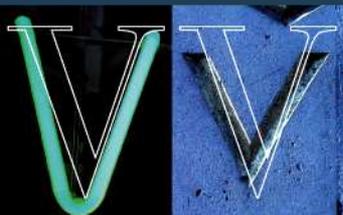
Restrictions on Personal Information About Addressee (3)

- Examples of personal information:
 - Amount of the addressee's previous contributions
 - Addressee's total donations for the previous year
 - Duration of the addressee's membership or contribution history
 - The expiration date of the addressee's membership
 - Birth date, occupational title, and similar personal data
 - Age, ethnicity, gender, or other demographic characteristics of the addressee, or medical condition of the addressee or a family member
 - Addressee's region, metro area, or neighborhood
 - The addressee's polling place, precinct, electoral district, or elected political representatives, and listings of political candidates, ballot propositions, or initiatives recommended by the sender for the precinct or other electoral district of the addressee
 - Number of members or supporters of the mailer in the area where the addressee lives



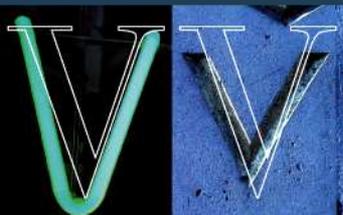
Restrictions on Personal Information About Addressee (4)

- For nonprofit mail, “explicit advertising for a product or service for sale or lease or an explicit solicitation for a donation” is construed broadly
- And the *relationship* between the personal information and the advertising or solicitation will be inferred in many circumstances
- Likewise, the requirement that the solicitation must be the exclusive reason for including the personal information may be deemed satisfied from the context
- Caveat: tax receipts



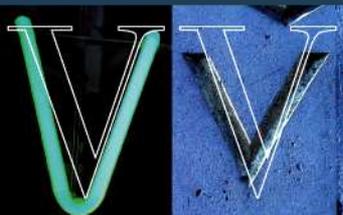
Restrictions on Products

- With some exceptions, “products” may not be mailed at Nonprofit Standard rates
- Products include:
 - Front-end premiums
 - Back-end premiums
 - Items produced by the mailer or purchased from third parties
 - Periodicals (if sold or have listed price or represented value)



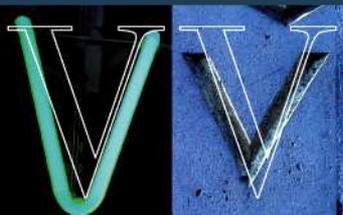
Exceptions to Restrictions on Products (1)

- Low-cost items
 - Defined as cost to the organization
 - Cost threshold in 2012 = \$9.90
 - Threshold adjusted for inflation at the beginning of each year
- Items donated to the organization
 - Must be no compensation, direct or indirect, to donor
 - If donation, cost to donor is irrelevant



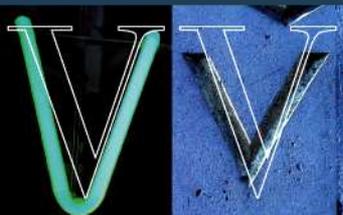
Exceptions to Restrictions on Products (2)

- Publication that is the organization's own and meets the basic eligibility criteria for Periodicals publications
 - Title
 - Publication at regular intervals (at least quarterly)
 - Formed of printed sheets
 - Identification statement
 - Known office of publication
 - Meet eligibility requirements for a periodicals category (general, requester, publication of institution or society)
 - Eligible for mailing as Standard Mail matter
- Note: publication may also qualify as low-cost item



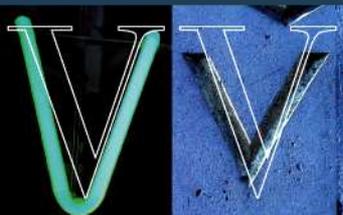
Advertising Restrictions: What Is Advertising?

- Definition: Anything that “advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service.”
- Examples:
 - Ad for nonprofit seminar that states that fee can be paid with organization’s affinity credit card also = ad for credit card
 - Ad for nonprofit seminar that mentions name and room rates of hotel = ad for the hotel if the hotel pays compensation to the nonprofit
 - Solicitation for donation, with offer of back-end premium (unless amount of requested donation $\geq 4x$ cost of premium and $\geq 2x$ requested value of premium)



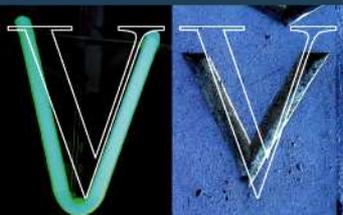
Advertising Restrictions: Examples of Non-Advertising

- Ad for nonprofit seminar that mentions name and room rates of hotel ≠ ad for the hotel if the hotel does not pay compensation to the nonprofit
- Solicitation for donation + announcement that donation may be paid by credit card—unless credit card issuer pays nonprofit for mentioning card
- Solicitation for donation + sweepstakes announcement—as long as donation is not required to enter sweepstakes.
- Solicitation for donations
- Solicitation for donations, accompanied by front-end premium (because recipient may keep premium without making donation)



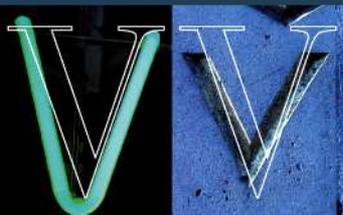
Exception to Advertising Restriction: Permissible References to Member Benefits

- Defined as “references to and a response card or other instructions for making inquiries about services or benefits available to members of the authorized organization.”
- Must be part of letter soliciting donations, new membership, or renewal of existing membership that is about to expire
- Membership benefits may not be described in a separate mailpiece component that is more than a single sheet



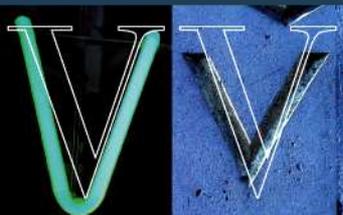
Exception to Advertising Restriction: Acknowledgement of Donors and Sponsors

- Listings must appear on a page entitled “Sponsors,” “Contributors” or “Donors”
- Listings may not contain promotional material (e.g., qualitative or promotional phrases about firm)
- Listings may not be described as advertising
- Firms may not be described as advertisers



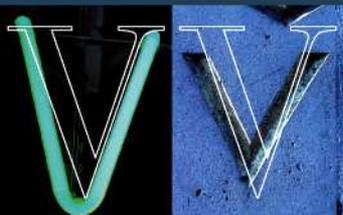
Exception to Advertising Restriction: Public Service Announcements

- Promote programs, activities, or services of governments or nonprofit organizations, or matters generally regarded as in the public interest
- No valuable consideration to publisher
- May not include any matter related to the business interests of the publisher



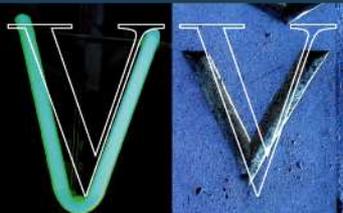
Cooperative Mailing Restriction: Introduction

- Definition: advertisement by authorized nonprofit organization of a good or service offered in cooperation with an unauthorized organization that shares cost, risk or benefit of mailing
- Main issue: is unauthorized party a joint venturer—or an arm's length vendor?



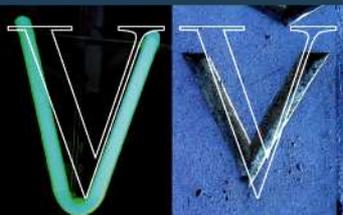
Cooperative Venture vs. Principal-Agent Relationship

- Who devised, designed, and paid for the mailpiece?
- Who paid the postage (directly or indirectly)?
- How are the profits and revenues divided?
- How are risks allocated?
- Who decides content of mailing and nature of underlying enterprise?
- Any other factors regarding parties' intentions and interests



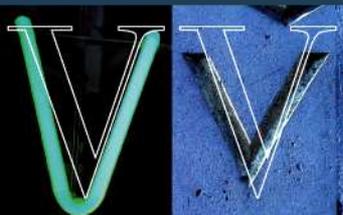
Cooperative Mailings: Three Recurring Areas

- Royalties
- Arrangements with for-profit affiliates of nonprofit
- Compensation of speakers and lecturers



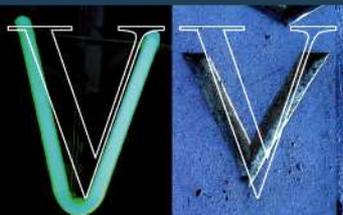
Cooperative Mailing Restriction: Exception for Fundraising Solicitations

- Cooperative arrangements with for-profit fundraising firms allowed
- Requirements:
 - Mailing solicits only monetary donations, and does not advertise goods or services
 - Nonprofit gets list with name and contact information of each donor, and the amount of the donation (or waives in writing the right to receive this information)



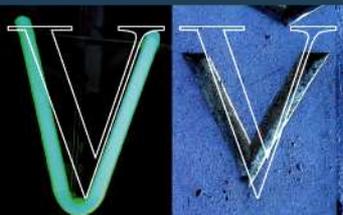
Substantial Relatedness Requirement

- General rule: Standard Nonprofit rates may be used to advertise goods or services unless their provision substantially advances the organization's qualifying nonprofit purpose(s)
 - Substantial relatedness requires more than generation of revenue for the organization
 - Test based on the substantial relatedness element of the UBIT test



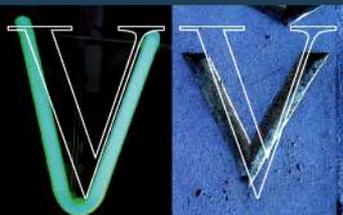
Exceptions to Substantial Relatedness Requirement

- Ads offering items received by organization as gifts or contributions from members or others (e.g., items offered in charity auctions, bake sales, car washes)
- Ads for travel arrangements, insurance, and credit cards
- Ads in mail matter that satisfies the content requirements for periodical publications



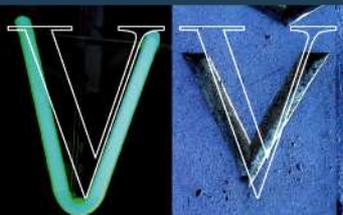
Travel Arrangements

- General rule: may not advertise travel arrangements at Standard Nonprofit rates unless three tests satisfied:
 - The organization mailing the ad is a qualified nonprofit mailer
 - The travel satisfies the substantial relatedness test—i.e., isn't just to generate \$ or cultivate members or donors. (In evaluating this, the USPS considers the entire itinerary.)
 - The arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization



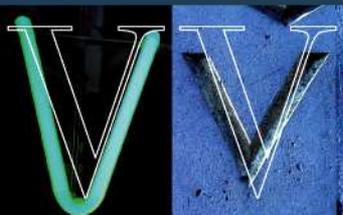
Definition of “Travel Arrangement”

- Must include all three elements:
 - Transportation
 - Accommodations
 - Destination
- One of more of these elements may be implied, however.



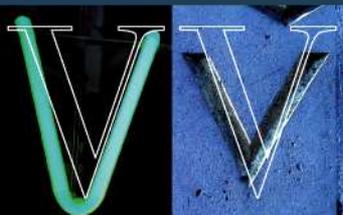
Insurance

- May not be advertised at Standard Nonprofit rates unless three tests satisfied:
 - The organization mailing the ad has NP eligibility
 - The policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization
 - The coverage provided by the policy is not generally otherwise commercially available



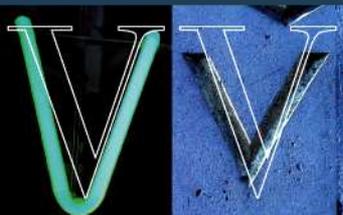
When Is Insurance “Not Generally Otherwise Commercially Available”?

- Depends on the specific policy terms, not the general kind of insurance
- Charitable gift annuity is not considered commercially available
- Policy that allows members, donors, supporters, and beneficiaries to give nonprofit the income in excess of costs from the policy is not considered commercially available

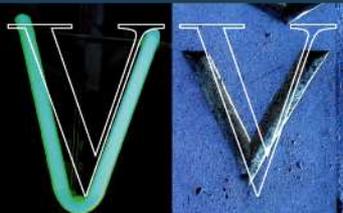


Financial Arrangements

- Defined as credit, debit, and similar cards
- May not be advertised at Standard Nonprofit rates, except when all of the parties involved in offering the card and its services are authorized to mail at the Nonprofit Standard Mail prices at the entry post office



Questions?



Contact Information

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