



Protect Your Halo Effect

Properly Message and Structure Your Cause Marketing and Prize Promotions



Melissa Landau Steinman

Partner | + 1 202.344.4972 | MLSteinman@Venable.com

Cristina I. Vessels

Associate | +1 202.344.4706 | CVessels@Venable.com

VENABLE LLP



What We'll Cover

- **States' Charitable Solicitation Laws**
 - What is cause-related marketing and why is it regulated?
 - How to structure relationships with nonprofits
 - Regulatory effects of how companies talk about supporting charities and causes
- **Prize Promotions and Other Giveaways**
 - Raffles
 - Sweepstakes and contests
 - Social media promotions
 - Auctions, loyalty, and other programs

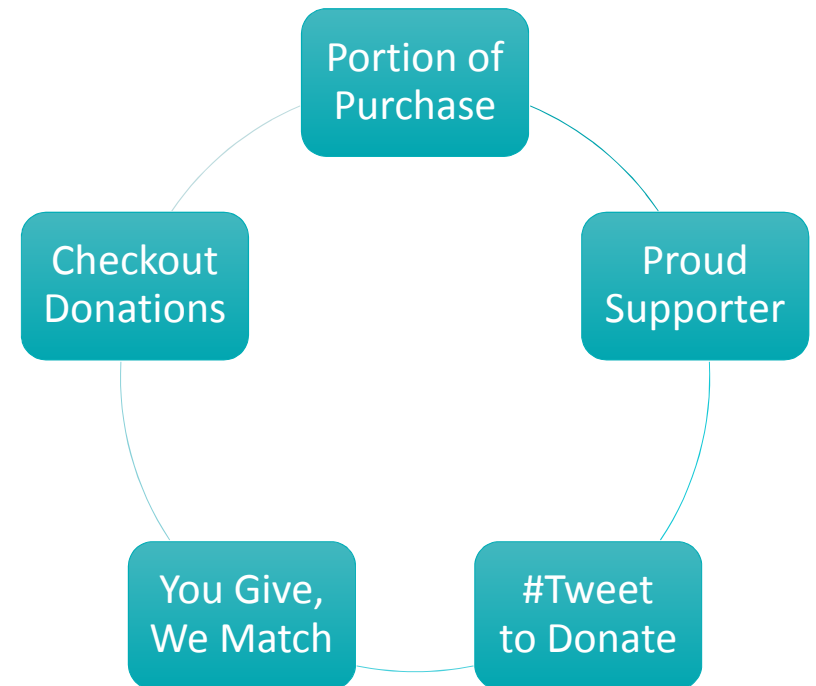


Cause-Related Marketing Campaigns

Effect of Charitable Solicitation Laws on Marketing Activities

What Is Cause-Related Marketing?

- Various for-profit/nonprofit collaborations
- Both organizations receive some benefit
 - Limited benefit to company from charity
 - E.g., indirect, benefits by association
 - Benefit to charity from company is direct and primary focus
 - E.g., raise awareness, raise money—
from company or the public





States' Charitable Solicitation Laws

- States regulate soliciting for charitable contributions in order to **protect the public**
- Soliciting contributions can be done directly or indirectly, by charities or third parties
 - Charitable sales promotions by CCVs
 - Free action campaigns
 - Customer donation programs
 - Professional fundraisers and fundraising consultants
- Regulatory requirements associated with each of these classes will vary

Regulation of For-Profits under Charity Laws

- **Commercial Coventurer (CCV)**

- Any person who, **for profit, advertises** that the **purchase or use** of goods, services, entertainment, or any other thing of value **will benefit a charitable organization**.

- **Professional Fundraiser**

- A person paid to solicit contributions on behalf of a charity, or who has custody and control of funds solicited.

- **Fundraising Consultant**

- A person paid to manage, advise, plan, produce, or design a solicitation, but who does neither solicits contributions for charity, nor holds funds raised for charity.

Charitable Sales Promotions

- Any CCV who wishes to conduct a charitable sales promotion needs to consider:
 - Contract (e.g., geographic requirements)
 - Registration and bonding may be required *before* beginning promotion
 - Closing report requirements may be required *after* the campaign ends
- Disclosures required for all ads regardless of medium (e.g., social media, TV, print)

VENABLE_{LLP}



Disclosures for Charitable Sales Promotions

- Required by:
 - Charitable solicitation and consumer protection laws
 - Charity rating organizations (e.g. BBB Wise Giving Alliance)
 - NY Attorney General best practices
- At a minimum:
 - **Names** of the donor and charity
 - **Specific benefit** per purchase/action
 - **Dates** of the campaign
 - Donation **minimums**/**maximums**
 - Required consumer actions, limits, etc.
- Avoid general language like “proceeds” or “revenue” (not tied to the purchase price)

Transparency is Key

- Are the key terms **clear**?
- Is the disclosure susceptible to **multiple meanings** or otherwise **ambiguous**?
 - A. When you buy **tickets** to *The Show* this month, Theater will donate \$1 to Charity, up to \$1,000.
 - B. When you buy **any tickets** to *The Show* this month, Theater will donate \$1 to Charity **per transaction**, up to \$1,000.
- Are the material terms readily **available at the point of sale**?

Free Action Campaigns

- Public not required to buy any product or use any service; donation triggered based on a free action
- Generally treat like a CCV campaign, but fewer requirements because no public inducement to buy/use goods/services
 - Parallel contract provisions
 - Disclosures of material terms
- Consider social media platform rules (e.g., don't encourage duplicate updates)

VENABLE LLP

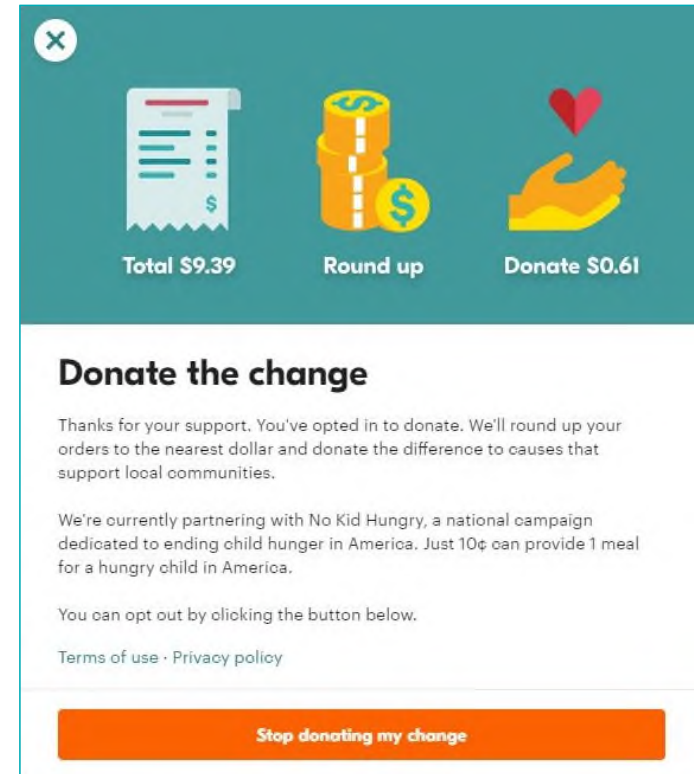


General Corporate Support

- Promote corporate support (e.g., “proud sponsor” or “proud supporter”)
- Avoid express or implied claims that action will benefit charity (or revert to CCV issues)
 - **This item** supports the mission of Charity.
 - Company supports the mission of Charity.
 - Every Meal eaten here **helps** protect our natural resources.
 - Every Meal eaten here helped protect our natural resources thanks to a donation to Charity from Company.
- Execute an agreement to cover:
 - License to use charity name and marks
 - Clear articulation of donation to be made (can be based on sales, if not so advertised)

Customer Donation Programs

- Public elects to contribute to charity as part of their purchase from company:
 - At the register
 - Round-up programs
 - Matching contributions
 - Loyalty/rewards
- No purchase of goods, no use of services required to trigger donation; not a CCV





Contract and Compliance Considerations

- 100% of each customer's donation goes to charity
 - Be careful to confirm this to avoid inadvertently entering realm of regulated professional fundraisers
- Include the name of the charity and a brief statement of its charitable mission
- Confirm how and when money will be remitted to the charity
 - Consider avoiding requiring minimum amounts raised before transferring
- Address donor data-sharing issues

Tips for a Successful Cause Marketing Campaign

- Confirm **upfront eligibility** requirements (by charity and company).
- Allow time for **contract** and for both parties to **file notices**, if necessary.
- Confirm that the **disclosures** are accurate, clear, and not misleading.
- Nonprofit's messaging related to the campaigns should **avoid “advertising”** (IRS definition).
- **Monitor results** and pull ads as soon as practical once max. donation met or campaign ends.
- Follow up with corporate donors to **get the results of the campaign** so reports can be filed.



Charitable Promotions

Considerations for Sweepstakes, Contests, and Other Campaigns

Avoiding Illegal Promotions

- Federal law and all states prohibit lotteries (except state-run lotteries). A lottery involves:
 1. The awarding of a **prize**
 2. By **chance**, where
 3. Participants have been required to submit **consideration** to enter
- If any one of the above elements is missing, the promotion may instead qualify as a sweepstakes, contest, or giveaway
- Even if all three elements are present, state law may provide a narrow exemption for certain types of charitable raffles and auctions

Raffles for “Qualified Charitable Organizations”

- **Raffles are illegal gambling** except where states specifically exempt charitable organizations to conduct raffles
- Not all nonprofits will be eligible to conduct charitable raffles
 - In-state residency requirements
 - 501(c) classification limits
 - Minimum periods of existence

	<u>Raffle</u>	Sweepstakes	Contest
<i>Prize</i>	✓	✓	✓
<i>Chance</i>	✓	✓	✗
<i>Consideration</i>	✓	✗	✓
<i>Other</i>	✓	N/A	N/A

Sweepstakes

- Watch out for consideration, disclosures, registration/bonding, and posting of rules (and winners)
- Should have alternative method of free entry, but can include request for donations
- May run as alternative to raffles
 - More permissive rules
 - No restrictions on who can sponsor (“qualified organizations”)
 - Greater geographic scope
- What about third-party platforms for sweepstakes and auctions?

	<i>Raffle</i>	<u><i>Sweepstakes</i></u>	<i>Contest</i>
<i>Prize</i>	✓	✓	✓
<i>Chance</i>	✓	✓	✗
<i>Consideration</i>	✓	✗	✓
<i>Other / Exemption</i>	✓	N/A	N/A

Contests and Games of Skill

- Rules requirements often parallel sweepstakes rules
- Registration may be required
- Common varieties:
 - Photo contests
 - Essay contests
 - Scholarships
 - User generated content contests

	<i>Raffle</i>	<i>Sweepstakes</i>	<u><i>Contest</i></u>
<i>Prize</i>	✓	✓	✓
<i>Chance</i>	✓	✓	✗
<i>Consideration</i>	✓	✗	✓
<i>Other</i>	✓	N/A	N/A

Social Media Promotions

- Social media platforms have their own rules (over and above federal laws) for
 - Sweepstakes and prize promotions
 - Charitable fundraising
 - Endorsements and testimonials
- For example, Facebook’s rules:
 - Require specific disclosures releasing Facebook from liability in any promotion;
 - Prohibit “likegating” or incentivized sharing of content, requiring sharing on personal pages, or certain other conduct;
 - Require compliance with all federal and state laws.

Social Media Influencers and Promotions

- **Basic Rule:** If an endorser (e.g., influencer) has received material consideration in return for talking about a product on social media, it should be disclosed per the FTC's Endorsement and Testimonials Guide.
- Pins and hashtags can be endorsements, and the fact that the pins/hashtags are incentivized by an entry to win a prize must be disclosed.
- Acceptable disclosures/hashtags include, but are not limited to,
 - #[CompanyName]Sweepstakes;
 - #ContestEntry;
 - But NOT #sweeps or other abbreviations.

Loyalty and Rewards Programs, Sweepstakes

- May wish to offer option to members to donate points.
 - Does this trigger CCV laws?
- May choose one or two charities or allow members to choose favorite.
- Do you need a license from charity to use marks? Other contractual requirements?
- Importance of providing clear terms/explanation as to how donations will be structured and points will be valued for purposes of donation.
- Are donations tax deductible?
 - If so, how are points/coins valued?
- Can members use points to buy entries in sweepstakes?
 - Consideration?
 - Free AMOE required?
- What if you allow members to bid in auctions using points?
 - What if you add a “buy it now” bid price—does this affect value/tax issues?

Voting / “Free” Action Programs Integrated with Sweepstakes and Loyalty

- No cost to consumer; often highly viral.
- Consumer helps allocate a predetermined aggregate donation.
- “Free”: like CCV but without purchase.



Home Men's Women's PINK Socks Clean Green Rewards Giveaways Deals

SHARE THE COMFORT - CLICK TO LEARN MORE

3rd Annual

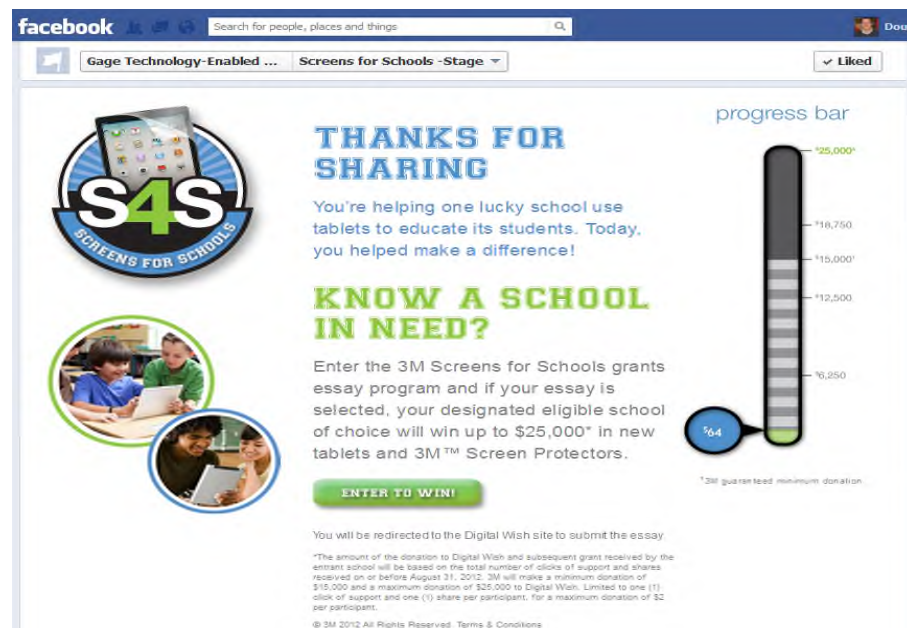
SOCK DRIVE

Click "Like" from November 14th- December 12th, and Hanes will donate a pair of socks to The Salvation Army- up to 250,000 pairs. Then, you can help donate even more by visiting the Socks tab!

Like


NOVEMBER 14- DECEMBER 12, 2011

VENABLE LLP



facebook Search for people, places and things

Gage Technology-Enabled ... Screens for Schools -Stage Liked



THANKS FOR SHARING

You're helping one lucky school use tablets to educate its students. Today, you helped make a difference!

KNOW A SCHOOL IN NEED?

Enter the 3M Screens for Schools grants essay program and if your essay is selected, your designated eligible school of choice will win up to \$25,000* in new tablets and 3M™ Screen Protectors.

ENTER TO WIN!

progress bar

\$25,000

\$18,750

\$15,000

\$12,500

\$6,250

\$64

*3M guaranteed minimum donation.

You will be redirected to the Digital Wish site to submit the essay

*The amount of the donation to Digital Wish and subsequent grant received by the entrant school will be based on the total number of clicks of support and shares received on or before August 31, 2012. 3M will make a minimum donation of \$15,000 and a maximum donation of \$25,000 to Digital Wish. Limited to one (1) click of support and one (1) share per participant. For a maximum donation of \$2 per participant.

© 3M 2012 All Rights Reserved Terms & Conditions



Charitable Promotions: Best Practices

Dealing with the Grey Areas

- Initial review of structure by counsel: clarify what type of promotion is being considered.
- Confirm geographic scope of campaign (regional only or nationwide?).
- Consider resources involved (e.g., drafting rules, finding judges, etc.).
 - Consider what kinds of offer terms and conditions are necessary/required.
 - Watch your disclosures!
 - Forms can be valuable (e.g., releases, sweepstakes guides, agreements).
- Understand social media platform rules could affect structure of the campaign.
 - Recognize the effect of going viral – potential nationwide registration.
- For any charitable solicitation partner – obtain representations and warranties.
- May want to check in with regulator.

Questions ?



Melissa L. Steinman

Partner

+1 202.344.4972

MLSteinman@Venable.com

Melissa Steinman focuses on advertising and marketing, including litigation, antitrust, trade regulation, and consumer protections. Melissa is particularly knowledgeable in the technology, retail, media, gaming, and hospitality industries. She also actively represents clients in government investigations and defends clients in class action cases. Melissa also assists nonprofit organizations and others with charitable promotions and commercial co-ventures. She represents celebrities, producers, and notable businesses, and trade associations involved in consumer products and services, media, Internet gaming, gambling, software, technology, and telecommunications.



Cristina I. Vessels

Associate

+1 202.344.4706

CVVessels@Venable.com

Cristina Vessels counsels public charities, trade and professional associations, and other nonprofits on a variety of charitable solicitation and fundraising matters, including: achieving state charitable solicitation registration, securing accreditation from charity rating organizations, structuring charitable raffles, drafting corporate sponsorship agreements, and collaborating with fundraising professionals to achieve her clients' development objectives. Cristina also advises for-profit businesses with their corporate philanthropy and cause marketing efforts, including all aspects of commercial co-venture promotions and social media charitable giving campaigns.

VENABLE LLP



Save the Date

July 18, 2019 – 2:00 PM – 3:00 PM ET

When The States Come Knockin': Doing Business in an Era of Increasing State AG Enforcement

Featuring Venable's Eric Berman & Mary Gardner

VENABLE LLP



© 2019 Venable LLP.
This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

VENABLE LLP

Advertising Law Boot Camp and Symposium | April 3-4, 2019