

# Fundraising in a Virtual World During COVID-19

**Cristina I. Vessels**

Associate | +1 202.344.4706 | CIVessels@Venable.com

**Ashleigh A. Allione**

Associate | +1 202.344.4252 | AAAllione@Venable.com

**VENABLE** LLP

# Work (and Fundraising) From Home

Website Donation Buttons

Virtual Galas/Fundraisers

Virtual Meetings

Fundraising Emails

Online Charitable Sales Promotions

Creative Corporate Partnership Opportunities



**MEET NEW PEOPLE FROM THE COMFORT OF YOUR HOME!**

**VENABLE** LLP

# Purpose of Charitable Solicitation Laws

States regulate soliciting charitable contributions in order to **protect the public**

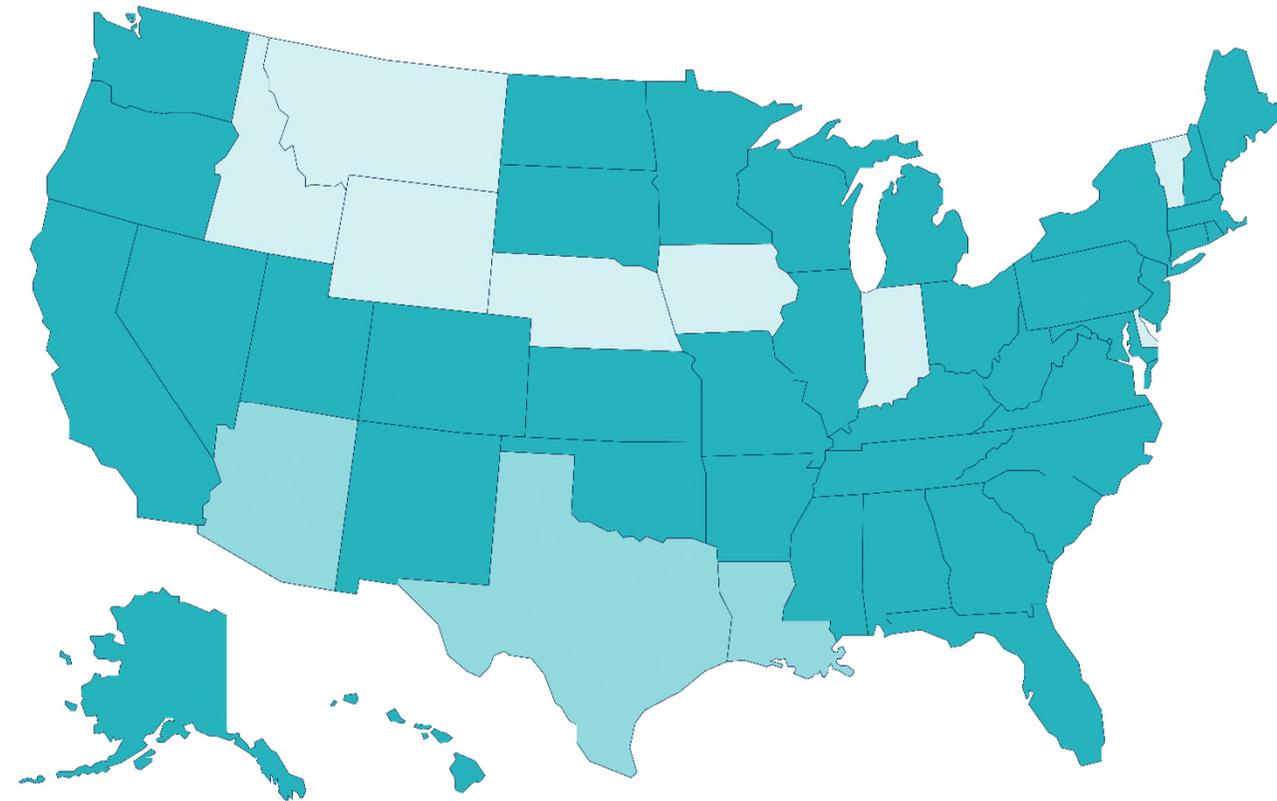
Regulate how and what nonprofits say to the public about solicitation campaigns

Regulate how for-profits structure relationships with nonprofits, and how they talk to the public about charitable campaigns

Charitable solicitation laws apply to various types of tax-exempt nonprofits, unless exempt

# Regulation of Solicitations

- Approximately 40 U.S. jurisdictions regulate soliciting contributions
- A “solicitation” or “to solicit” is broadly any:
  - Direct or indirect request
  - For a contribution (money/property)
  - On the representation that the contribution will be used for charitable purposes
- Formal grant requests are solicitations
- Check if activity (or entity) may be exempt



- Registration for all, non-exempt nonprofits
- Registration for select nonprofits
- Registration not required

# When is Registration Required?

Registration is required by letter of the law for soliciting residents of a particular state

Registration is required prior to soliciting contributions (usually)

Registration is a prerequisite for various activities:

- Benefitting from charitable sales promotions
- Conducting raffles (if otherwise a “qualified” nonprofit)
- Contracting with professional fundraisers or fundraising consultants

# Where Should Your Nonprofit Register?

## At Minimum

- State of incorporation
- State where primary operations based

## Physical Solicitations

- Direct contact (e.g., in-person requests)
- Indirect contact (e.g., mass mailings, telephone requests)

## Online Solicitations

- Active activity (e.g., email blasts to list-serve)
- Passive activity (e.g., “Donate Now” feature)

## Online Solicitation

You have a “donate now” button or send an email to donors out of state.

Is your organization required to register to solicit in that state?



# Charleston Principles

- Non-binding guidelines to help nonprofits and state regulators determine when registration required
- A few states have incorporated the Principles into law (CO, MS, TN)
- Many states have not adopted the Principles.
- Whether registration is “required” to solicit contributions online is based on two main questions . . .

**Whatever It Takes for Youth, Families and Communities.**

Currently providing:  
Youth meal program (ages 1-18), Virtual Programming,  
Online Mentoring, & Social Solutions for all area youth.

**BOYS & GIRLS CLUB OF ABERDEEN AREA**

**COVID-19 RELIEF ♥ FUND**

Click to Donate

Your COVID-19 Relief Fund donation will be doubled up to \$16,500 thanks to Schwan Financial Group LLC, NorthWestern Energy, Insurance Plus and Jeff & Laura Stockert.

Click [here](#) for information on charitable opportunities arising out of the CARES Act.

Click [here](#) to see if your employer offers a match to your contribution.

**DONATE NOW!**  
[CLICK HERE](#)

# Charleston Principles: Registration Requirements Applicable to Internet Solicitations

## A. Entities That Are Domiciled Within the State

1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
2. An entity is domiciled within a particular state if its principal place of business is in that state.

## B. Entities That Are Domiciled Outside the State

1. An entity that is not domiciled within a state must register in accordance with the law of that state if:
  - a. Its non-Internet activities alone would be sufficient to require registration;
  - b. (1) The entity solicits contributions through an interactive website; and  
(2) Either the entity:
    - i. Specifically targets persons physically located in the state for solicitation, or
    - ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its website; or
  - c. (1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the website; and  
(2) The entity satisfies Principle III(B)(1)(b)(2).

# What Is Repeated and Ongoing or Substantial Basis?

State	Repeated and Ongoing	Substantial
Colorado	50+ donations	The lesser of \$25,000 or 1% of the organization's total contributions in online contributions from Colorado
Mississippi	25+ donations	\$25,000
Tennessee	100+ donations	\$25,000

# Keep Track of Your Donors

Where do your major donors reside? If they are companies, where are they located?

Are you receiving regular donations from residents in a particular state?

Can you affirm that you do not need to be registered in the state?



**Notice of Intent to Cease Solicitation Activity**  
Division of Charitable Solicitations and Gaming  
Department of State  
State of Tennessee  
312 Rosa L. Parks Avenue, 6th Floor  
Nashville, Tennessee 37243  
Phone: 615-741-2555  
Fax: 615-253-5173  
sos.tn.gov/charitable

For Office Use Only

**INSTRUCTIONS:** Pursuant to T.C.A. § 48-101-506(h), any person that ceases solicitation activities after registration must notify the secretary of state of such fact within thirty (30) days after solicitation activities end. Within ninety (90) days after the end of the solicitation activities or ninety (90) days after its fiscal year ends, that person shall file with the secretary financial documentation required by T.C.A. § 48-101-506(b).

Name of organization: \_\_\_\_\_ CO ID: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ FEIN: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_  
Telephone Number: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_  
E-mail: \_\_\_\_\_ Website: \_\_\_\_\_

I, \_\_\_\_\_, do swear and affirm that \_\_\_\_\_ is no longer soliciting donations from or within the State of Tennessee, effective immediately. I do swear and affirm that this organization will no longer conduct any solicitations in the State of Tennessee and understand that if the organization wants to solicit from or within the State of Tennessee in the future, it must first register with this office. I understand that the above mentioned organization will be deemed inactive in the State of Tennessee upon receipt of this form and accompanying financial documentation by the Division of Charitable Solicitations.

**Or**  
I swear and affirm that the above mentioned organization is not receiving contributions from the State of Tennessee on a repeated and ongoing basis or a substantial basis through its websites, as defined by Tenn. Comp. R. & Regs. 1360-03-01-01.

\_\_\_\_\_, Secretary of State, hereby certifies that the information in this notice of intent to cease solicitation activity is true and correct to the best of my knowledge.

Most recent IRS Form 990 or financial documentation is **attached** as required by T.C.A. § 48-101-506(b).

**Please Note: Notice/Request will not be processed unless financial documentation accompanies form.**

Signature of Principal Officer or Authorized Representative: \_\_\_\_\_

Salutation: \_\_\_\_\_

First: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Position Title: \_\_\_\_\_ Date: \_\_\_\_\_

# Email Solicitation

Subject: What your donations are doing  
Reply To: "Movember" <[replies@movember.com](mailto:replies@movember.com)>

Can't see any images? [Click here](#)

 **MOVEMBER**<sup>®</sup>

SIGN UP

DONATE

## HERE'S THE HAIRY LOWDOWN.

Black men are twice as likely to die from prostate cancer. **Forward Momentum** is a new cross-sector initiative founded by Movember and key organizations in the prostate cancer space to address racial disparities, increase diversity in research and develop new digital resources for men with prostate cancer.

[Tell me more](#)

# Social Media Solicitation

Charleston Principles were issued before social media, but still apply to social media.

- Where are donations coming from?
- How much are the donations for?

Consider platform-specific rules for the various social media platforms for fundraising, if applicable

**Stand Up To Cancer** ✓  
September 5 at 9:00 AM · 🌐

In a world where every patient becomes a long-term survivor, the possibilities are endless. ❤️ In honor of International Charity Day, donate to help create a world with more long-term survivors at <https://bit.ly/31ZkuQH>.

**DONATIONS HELP MAKE**

...more memories with loved ones  
...more graduations  
...more weddings  
...more birthdays  
...more time

**DONATE NOW**

**S12C**

0:05

112 42 Comments 20 Shares

# Why It's Important

Not following rules can result in taxes, penalties, regulator scrutiny, bad PR, etc.

Lack of current registration may result in lost corporate partnership opportunities

Donors may ask about this status

Charity accreditation and rating orgs.

Consider strategic plans for growth

**We are a Charity Navigator Four Star Charity that meets all 20 Better Business Bureau charity standards, and we carry the GuideStar Platinum Seal of Transparency.**



## Be Creative!

### The Gala is 4 Days Away!

We have over 500 attendees joining, including parties hosted by our amazing supporters! Our gala program will be streaming live on our gala webpage [here](#) on the night of the event!

All gala package benefits—including wine, meal-kits, meal gift cards, and masks—have been shipped, so be on the lookout for those items in the coming days. And if you haven't heard, **our Silent Auction is now open!** Bid on private dance sessions, luxury accessories, and an array of gift baskets below!

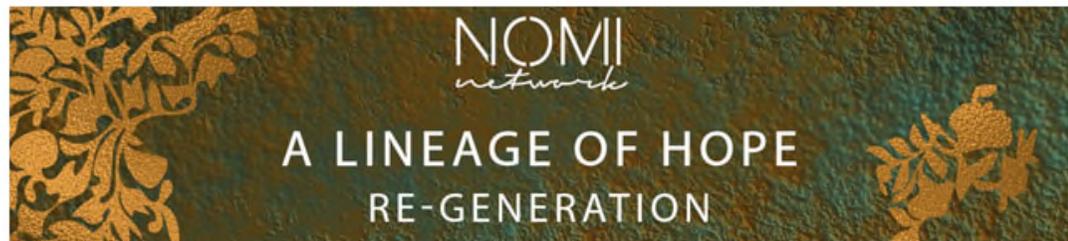


### How To Host A Watch Party

**Zoom:** Invite friends to watch the gala live with you over Zoom! You can either share your screen or watch the gala separately and use the chat feature.

**Webex:** For those who use Webex as their preferred video conferencing platform, start a Webex meeting with friends who are watching the gala!

**Microsoft Teams:** Use Microsoft Teams to start a meeting and invite your network to join!



### See You Live In a Few Hours!

You can stream the gala from 7-8 PM EST at the link below!

[Watch the Event Here!](#)

### Send Us Your Photos!

We want to see your faces during this special event! Share videos, photos, or boomerangs of your in-person watch parties, screenshots of your virtual watch parties, or even selfies in your gala attire.

\*Tag us on IG or Facebook [@nominetwork](#) and don't forget to [#nomigala2020](#). You can also send your photos to [events@nominetwork.org](mailto:events@nominetwork.org).

# State Required Disclosure Statements

- Several states require certain disclosures when communicating with donors about contributions.
- Vary depending on state
- Separate from the IRS disclosure regarding deductibility of contributions
- Written solicitations
  - Direct mail solicitations
  - Email solicitations
  - Website (if ability to donate online)

Set apart

**Bold**

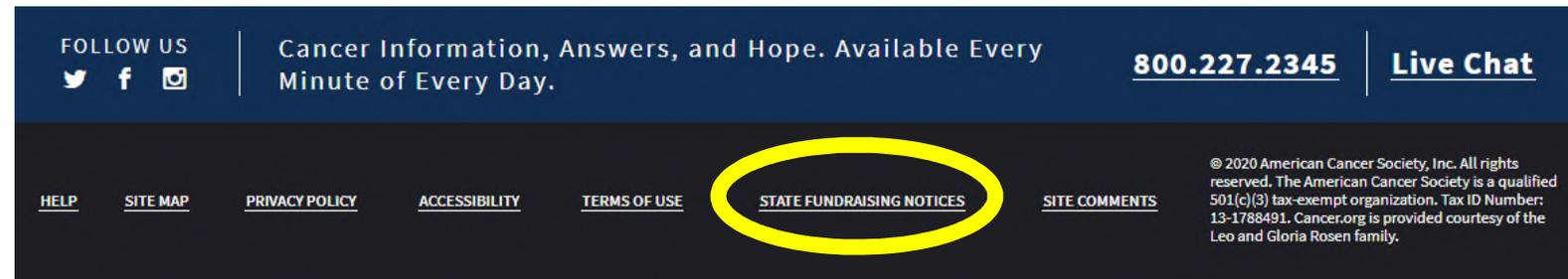
Clear &  
Conspicuous

Font Size

Underline

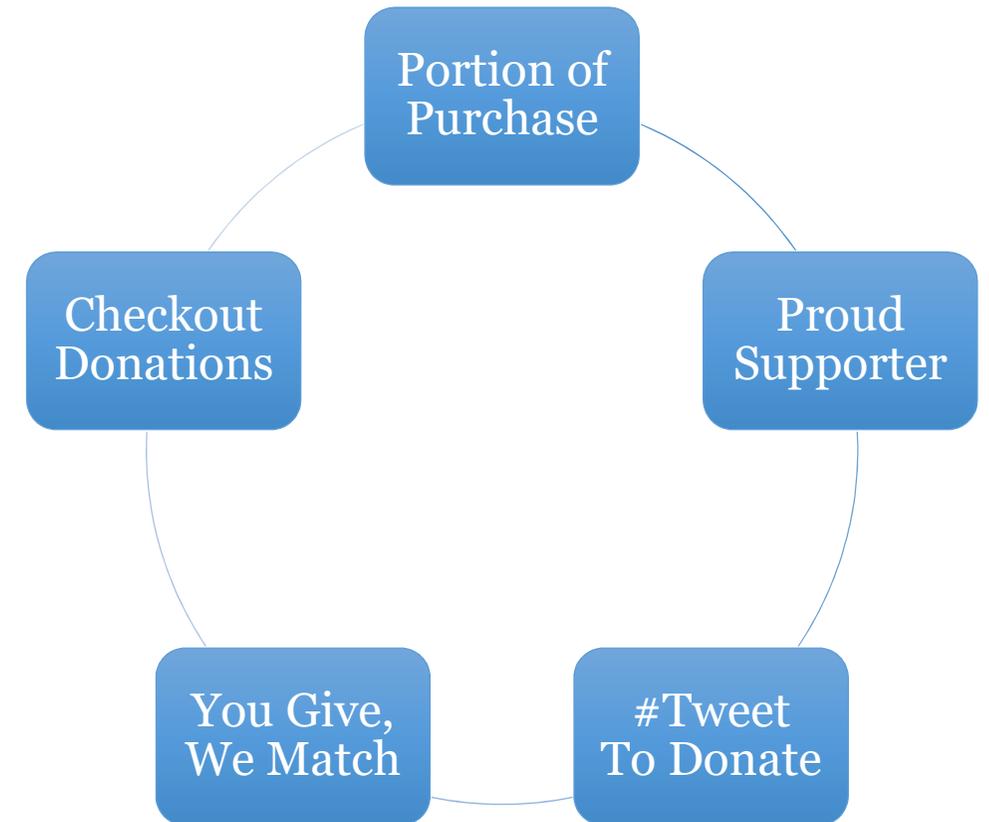
# Where Do Disclosures Go on Websites?

- Disclosures should be readily available to donors
  - Directly available from donation page, if possible
    - Could place below “Donate Now” button
    - Link to “To see Organization’s disclosure statements, click here”
  - Include on page for financial statements or other financial information
  - Permanent footer link at bottom of webpage
  - Recommend that disclosures be in at least 10-point type



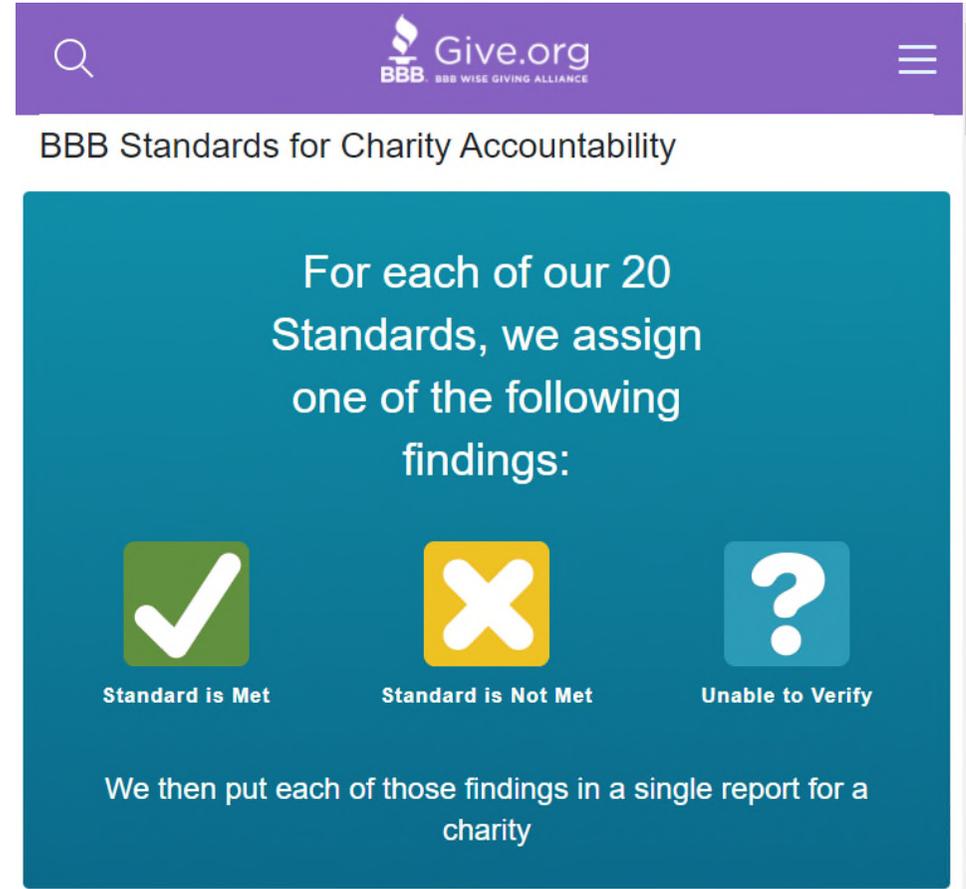
# Cause-Related Marketing

- 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)



# Where & Why These Rules Exist

- Federal Trade Commission
- State charitable solicitation laws
- State FTC Acts, consumer protection laws
- Charity rating organizations



The screenshot shows the Give.org website header with a search icon, the Give.org logo (BBB Wise Giving Alliance), and a menu icon. Below the header is the title "BBB Standards for Charity Accountability". The main content area has a teal background with white text: "For each of our 20 Standards, we assign one of the following findings:". Below this text are three icons: a green checkmark, a yellow 'X', and a blue question mark. Under each icon is a label: "Standard is Met", "Standard is Not Met", and "Unable to Verify". At the bottom of the teal box, it says "We then put each of those findings in a single report for a charity".

BBB Standards for Charity Accountability

For each of our 20 Standards, we assign one of the following findings:

-  Standard is Met
-  Standard is Not Met
-  Unable to Verify

We then put each of those findings in a single report for a charity

# Charitable Sales Promotions

- A **commercial coventurer** (CCV) is any person who, for profit, advertises that the purchase or use of a good, service, or other thing of value will benefit a charity.
- States' laws require contracts, sometimes with state-specific provisions
- State filings may be required
- Disclosures required

**TAP INTO CHANGE**

With every purchase of Coors Light®, 15 cents is donated to your local LGBTQ charity. Together we can move mountains.

**CLIMB ON**

**GREAT BEER GREAT RESPONSIBILITY**

Beer purchase required. Program begins 6/8/17 and ends 8/21/17 or stock market valuation is less than \$100. For Terms & Conditions visit [www.promosales.com/PL907](http://www.promosales.com/PL907). Void outside of CA, NY, OH, & TX and where prohibited. MillerCoors® Coors Light® donate \$0.15 to the Equality Federation for every 12-pack case or case equivalent per liter of a MillerCoors® beer product (bottle/can) purchased from a participating retailer. Min. donation is \$5,000 (\$1,000 per eligible market) and maximum donation is \$50,000 (\$10,000 per eligible market). All donations will be made by MillerCoors LLC and not by participants.

# Online Charitable Sales Promotions

- Who . . . is donating
- What . . . is the public being asked to do
- When . . . will the promo be valid
- Where . . . will it take place
- How . . . will the campaign be advertised

VENABLE<sub>LLP</sub>

The screenshot shows a product listing for 'Dogtor (Special 100% Donation)' by Poptop. At the top, the Poptop logo is visible, along with a search icon, a shopping cart icon with a '0' badge, and a menu icon. A dark blue banner below the logo contains the text: 'BUY 2 POPTOPS SAVE 15%, BUY 3 SAVE 20%, BUY 4 SAVE 25% - USE CODE POPTOPS'. The main heading is 'SUPPORT COVID-19 RESPONDERS' in bold blue text, followed by the text: '100% of every sale is donated to our Poptivism charity partners responding to the COVID-19 crisis'. The product image shows a large light blue oval-shaped Poptop with a cartoon dog wearing a white lab coat, a blue tie, and a stethoscope. The text 'TRUST ME' is at the top and 'I'M A DOGTOR' is at the bottom of the oval. To the left of the main image are three smaller versions of the same Poptop, and to the right are navigation arrows. Below the product image, the text 'POPTIVISM' is displayed in blue, followed by '100% of this sale supports Doctors Without Borders' in blue. Below that, 'Est. Amount Raised: \$5,095' is shown in purple. The product name 'Dogtor (Special 100% Donation)' is underlined, and the price '\$15.00' is listed at the bottom.

POPTOP

BUY 2 POPTOPS SAVE 15%, BUY 3 SAVE 20%, BUY 4 SAVE 25% - USE CODE POPTOPS

**SUPPORT COVID-19 RESPONDERS**

100% of every sale is donated to our Poptivism charity partners responding to the COVID-19 crisis

TRUST ME

I'M A DOGTOR

POPTIVISM

100% of this sale supports Doctors Without Borders

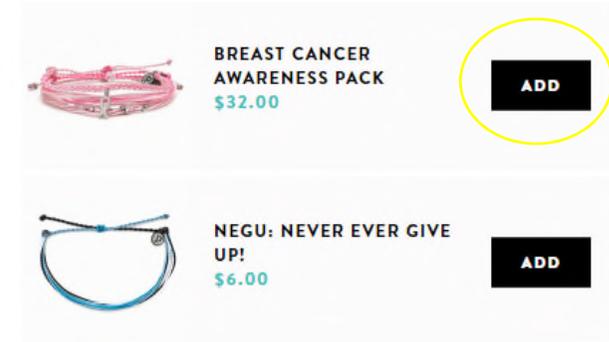
Est. Amount Raised: \$5,095

Dogtor (Special 100% Donation)

\$15.00

# Do I Need to Register an Online Promotion?

- States' laws do not specifically exempt online promotions
- Consider Charleston Principles
  - Where domiciled?
  - What advertising activities?
  - How much expected to be raised?
- Other considerations related to the organization or proposed activities?
- Alternative promotion structures to minimize compliance obligations?



## DESCRIPTION -

Introducing our first-ever charity ring! Show your support for all the strong ladies in your life with our new Breast Cancer Awareness Ring, featuring a pink enamel ribbon. For each ring sold, we'll donate 5% of the purchase price\* to **Boarding 4 Breast Cancer**, a nonprofit foundation that advocates for early detection and a healthy, active and sustainable lifestyle as the best means for preventing breast cancer.

If you'd like to learn more about our Charity donation percentages, click [here](#).

DETAILS +

OUR CAUSE +

SIZE CHART +

# Filing Obligations

- Pre-promotion:
  - Registrations for charity
  - Registration, bonding, and promotion notices for CCV
  - Usually required 10-15 days prior to the start of the campaign
- Post-promotion reporting may be required of charity and CCV



We're available at home - where we hope you are right now - but your bartenders miss you. So we've started a tab by donating \$15K to the United States Bartender's Guild and will be adding an additional 30% tip for every bottle delivered through May 1st. Stay home to help **#FlattenTheCurve** while we **#TipYourBartenders**

# Better Late Than Never



Email To:

Subject: Promo Live Tmrw!

- States are being flexible (mostly) in light of the pandemic when it comes to the *mechanics* of filing
- But the *timing* for filings hasn't changed
- Both the CCV and charity have filing obligations for nationwide campaigns, and some states are starting to more actively enforce those rules, including the timing requirements

# Is the Promotion Advertised?

*“For every bobblehead doll of Anthony S. Fauci it sells, the National Bobblehead Hall of Fame and Museum is donating \$5 to the Protect the Heroes campaign, which supports the purchase of personal protective equipment for hospitals.”*

The Washington Post  
Democracy Dies in Darkness

Sections

Cristina Vessels

## How Fauci came to receive the 'ultimate honor': His own bobblehead doll

For every bobblehead doll of Anthony S. Fauci it sells, the National Bobblehead Hall of Fame and Museum is donating \$5 to the Protect the Heroes campaign, which supports the purchase of personal protective equipment for hospitals. (Nyia Sissac/for The Washington Post)

By **Robyn Ross**

September 14, 2020 at 9:00 a.m. EDT

+ Add to list

# Campaign Disclosures

- States' laws provide minimum disclosures
- Industry best practices (FTC, BBB Wise Giving Alliance Standard 19, New York AG)
- At a minimum:
  - **Names** of the donor and charity
  - **Benefit** per purchase/action
  - **Dates** of the campaign
  - Donation **minimums/maximums**
  - Required consumer actions, limits, etc.

VENABLE<sub>LLP</sub>



Nicorette  
NicoDerm<sub>CQ</sub> & CVS  
pharmacy

**STAND UP TO CANCER**  
10 YEARS OF IMPACT



For every box of Nicorette, NicoDerm CQ, or MyQuit Band purchased at CVS Pharmacy®, GSK Consumer Healthcare will donate \$1 to **STAND UP TO CANCER** (up to \$100,000).  
Offer valid 10/28/18-11/17/18

Support SU2C at [StandUpToCancer.org/CVSHealth](https://StandUpToCancer.org/CVSHealth)

Stand Up To Cancer is a division of the Entertainment Industry Foundation, a 501(c)(3) charitable organization. Behavioral support program increases chances of success. Use as directed. ©2018 GSK group of companies or its licensor. CHUS/CHNCO/0105/18

# But Company Insists on Saying “100% of *Profit*”?

## Our Partnership with St. Jude Children's Research Hospital

At least 8% of the price from each purchase supports the St. Jude mission: Finding cures. Saving children.® Treatments invented at St. Jude have helped push the overall childhood cancer survival rate from 20% to more than 80% since it opened more than 50 years ago. Thanks to donations, families never receive a bill from St. Jude for treatment, travel, housing or food – because all a family should worry about is helping their child live.

SHOP TO SUPPORT NOW

VENABLE<sub>LLP</sub>

- States’ laws may permit estimated amounts:
  - “If the actual dollar amount or percentage per unit of goods . . . purchased . . . that will benefit the [charity] . . . cannot reasonably be determined prior to the beginning of the charitable sales promotion, the [CCV] shall disclose an ***estimated amount or percentage*** in each advertisement for the charitable sales promotion.”
- Avoid general language like “all proceeds” or “net revenue”
- But can consider hybrid disclosure with minimum per purchase amount

# Careful to Avoid Restricted Donations

Emergencies lead to a flurry of fundraising efforts (hurricanes, wildfires, COVID-19)

Disclosures are very important from a consumer-facing standpoint

But also consider how message framing can affect ability to expend donation received

- Have contributions raised been in a way that *designates or restricts* them for a particular fund, project, or purpose?
- Contract should give charity right to review materials prior to publication

# Free Action Campaigns

Most recent video ...



**Skechers** Million Mask Giveaway Dance Challenge! Make a dance to help those in need!

**Skechers** is donating 10 masks for every video submitted on using the [#DanceForMasks](#) or [#MillionMaskChallenge](#) hashtag to frontline workers in need.

Challenge ends June 17th, for more information please visit <https://lnkd.in/gYh4fsd>

281 • 2 Comments • 12,867 Views • 3mo

Like Comment Share View post

No Purchase

Standard Disclosure

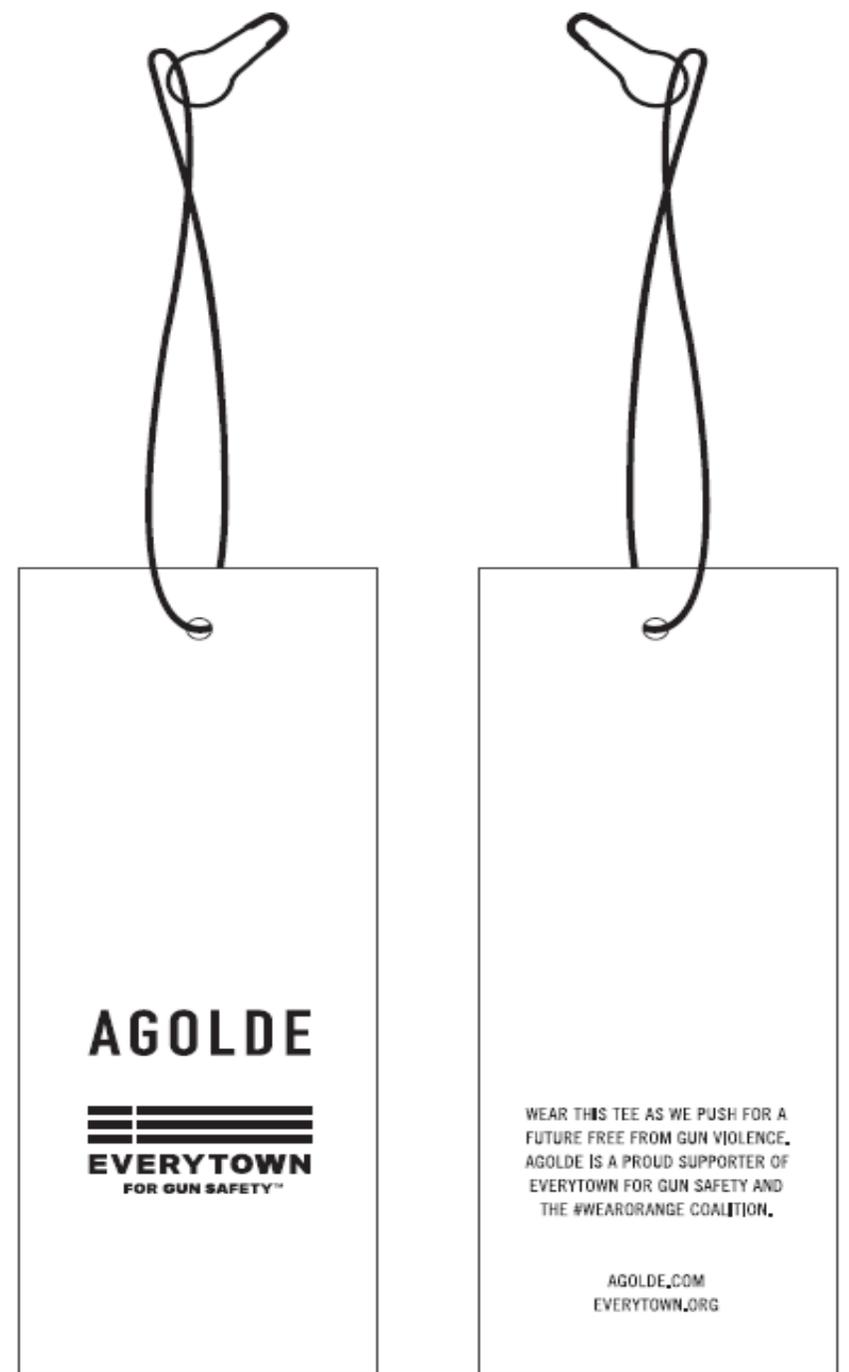
Material Terms

Platform Rules

# General Corporate Support

- Promote corporate support only (e.g., “proud sponsor” or “proud supporter”)
- Avoid express or implied claims that action will benefit charity—the donation will be made regardless!
- Execute an agreement to cover, principally, IP issues, articulate the donation, etc.

**VENABLE** LLP



# Customer Donation Programs

- Public elects to contribute to charity as part of their purchase from company:
  - Check-out donations
  - Round-up programs
  - Matching contributions
  - Loyalty points
- No purchase of goods, no use of services required to trigger donation; not a CCV



# Raffles for “Qualified Charitable Organizations”



- Raffles are illegal gambling
- *Except* if state specifically allows nonprofits 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

# How the IRS Rules Come into Play

Charitable organizations are exempt from federal income tax because they are organized and operated “exclusively” for charitable purposes

Contributions and other income earned in ways related to a charity’s mission are not taxed

But money received for purposes “**unrelated**” to its exempt purpose may be taxed (UBIT)

Too much UBI can jeopardize a charity’s tax-exempt status

# How Is UBIT Relevant to Cause Marketing?

If in exchange for a donation, charity gives something of value back to the donor, the donation could be subject to tax

So if charity “**advertises**” for a donor, then it may have to pay a tax on part of the donor’s contribution

**Advertising** is any message that promotes or markets the trade, business, or products of a donor

This applies only to what charity can say about its donors, their products, and campaigns (not what donors say about the charity in their campaigns)

# What Does Advertising by a Charity Look Like?

- ✘ Statements that include **qualitative or comparative** descriptions of sponsor's products, services, facilities, or the company itself
- ✘ Statements that **encourage or induce** the purchase of sponsor's products or services
- ✘ **Endorsing or advertising** a sponsor or its products or services
- ✘ Providing **price information** for sponsor's products; **linking directly to sales page**
- ✘ Featuring, linking to, or **reposting a sponsor's cause marketing spot** that includes a direct call to action

# So What Can a Charity Say About Donors?

To avoid incurring a tax on donor contributions, a charity should only recognize, acknowledge, and thank donors in its messaging and content, such as by:

- ✓ Using a **sponsor's name, logo, and established slogan**
- ✓ Listing the sponsor's **locations, telephone numbers, or website**
- ✓ Including **value-neutral descriptions** of sponsor's products or services
- ✓ Listing the sponsor's **brand or trade names**, and product or service lines
- ✓ **Linking to the sponsor's website**, but not to products' sales pages
- ✓ Recognizing the donor as the **exclusive event sponsor**

# Tips for a Successful Cause Marketing Campaign

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

Flexibility and creativity will go a long way in this space!

---

# Q & A

---



© 2020 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