

Maximize Your Profile and Fundraising Efficiency

Making the Most of Cause-Related Marketing Collaborations with Donor Brands

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What We'll Cover

Charitable sales promotions and commercial coventurer activity

Customer donation programs

Online charitable platforms and other industry developments

Prize promotions (sweepstakes and contests) with charitable giving components

Endorsements and testimonials

Mobile giving

Privacy

Oversight of Cause-Related Marketing

State and Federal Laws, Industry Standards

Fundraising Regulation – It's Not Just States

- **States' Charitable Solicitation Acts** exist in about 40 U.S. jurisdictions and regulate the solicitation of contributions through various means
- **Federal Trade Commission** has issued [guidance on transparency and best practices for online charitable giving portals](#)
- **National Advertising Division (NAD)** of the BBB National Programs investigates and requires substantiation for charitable giving claims by advertisers
- **Multistate Agency Investigations** like the [PPGF Assurance of Voluntary Compliance](#) set tone for future industry developments



Primary Objective: Consumer / Donor Protection

- Fundraising is regulated to **protect the public**
 - File **registrations** and **financial reports** to disclose the results of their efforts
 - Include certain **contract terms** in fundraising agreements to ensure transparency with the charity
 - And anytime the public is asked to contribute, do, or buy something in order to trigger a donation, include **material disclosures in advertisements**
- Apart from mandated requirements, consider key tenets:
 - Adequately inform the public
 - Prevent consumer confusion
 - Don't mislead or hide terms about the charitable effect of consumers' purchases or actions
 - Remember common sense!

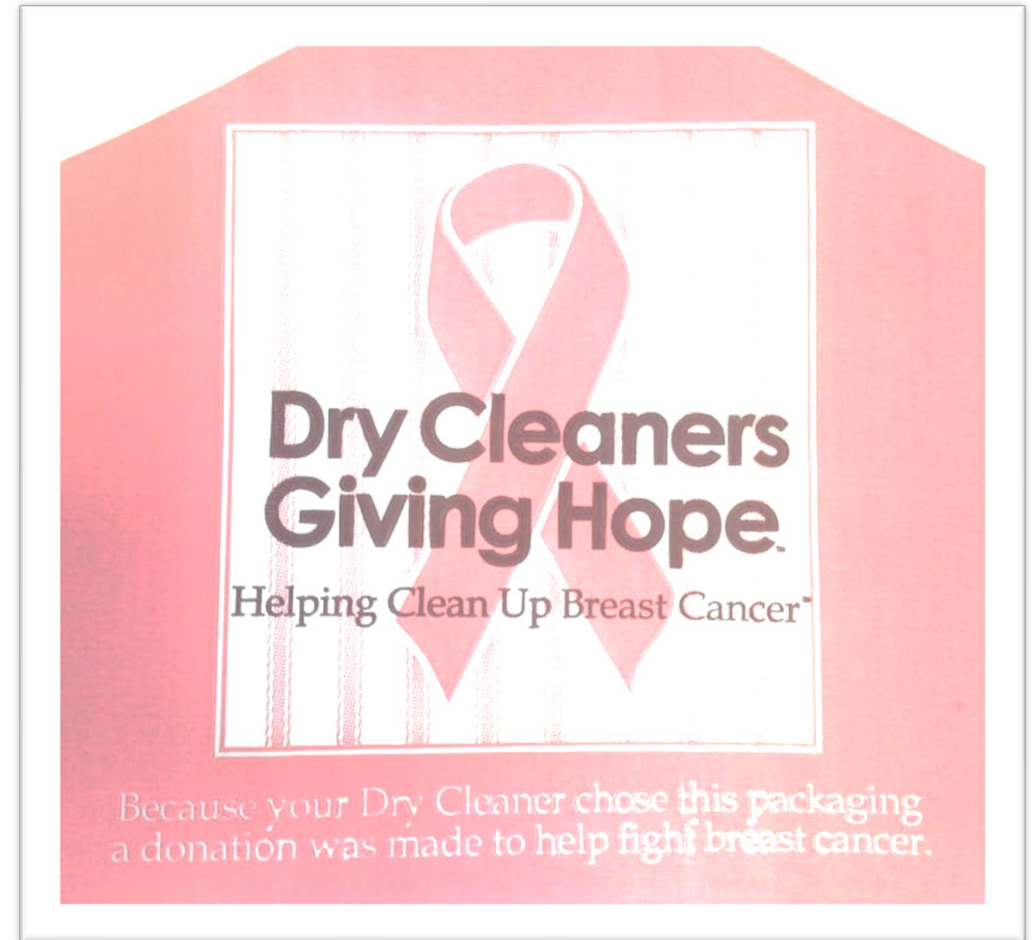


Collaborating with Brands to Support Your Nonprofit Through Charitable Giving

Be Creative *AND* Compliant

Cause-Related Marketing Is an Umbrella Concept

- **Mutually beneficial arrangements**
 - Promote brand and/or products
 - Raise awareness for the charity's mission
- **Dozens of permutations, like:**
 - CCV promotions
 - Free action campaigns
 - Customer donation programs
 - Matching campaigns
 - Auctions
- **Compliance typically involves:**
 - Contract with or consent from the charity
 - Disclosures appropriate for the campaign
 - State filings (maybe)
 - Reporting to the charity and states



Charitable Sales Promotions by CCVs

A commercial coventurer (CCV) is generally any person who conducts a charitable sales promotion

A charitable sales promotion is generally a campaign where a person:

- **Advertises**
- That the **purchase or use**
- Of a **good or service**
- Will **benefit** a charitable organization

How It Works

Every time you swipe, we plant trees to reduce your carbon footprint — and give you extra cash back rewards once you get down to zero. All for just \$60 per year.

1

Fight climate change with every swipe

We plant a tree every time you make a purchase—and let you round up to plant one too.

2

Go carbon-neutral

Using this card just once a day can plant enough trees that, once grown, will counteract your daily negative carbon footprint (unless you're a real gas-guzzler)¹. Track your progress in our app.

3

Get rewarded

Every month you get to carbon zero, we'll reward you with up to 1% cash back on all of your purchases.

3

Every month you get to carbon zero, we'll reward you with up to 1% cash back on all of your purchases.

Compliance for Charitable Sales Promotions

Contract:

- CCV must have nonprofit's "written consent"
- Agreement must often include certain statutorily required terms (e.g., geographic scope of promotion, promotion dates, estimated units of goods or services to be sold, etc.)

Pre-Promotion Compliance:

- Determine the scope of the campaign and consider where your **nonprofit** is registered to solicit
- Consider whether your **nonprofit** must submit a notice of the promotion in AR, CT, NH, NJ, or UT
- Evaluate whether AL, CA, HI, IL, MA, MS, or SC requires the **CCV** to submit filings, bonds, etc.

Post-Promotion Compliance:

- Ensure receipt of accounting (e.g., New York's 90-day reporting requirement)
- Ensure receipt of payment (e.g., 90 days from start or 90 days from end of promotion?)
- File summary reports and/or review CCV's filings, as needed (e.g., charity files a report in NJ)
- Record-retention periods (usually 3 years); typically, but not always, the responsibility of the CCV

Disclosures for Charitable Sales Promotions

Between date and date, Company will donate to Charity X% of each Widget sold online at company.com, with a minimum guaranteed donation of \$Y and up to a maximum possible donation of \$Z. Charity is a 501(c)(3) nonprofit organization, whose mission is to . . . To learn more about Charity, visit charity.org. No portion of purchase is tax deductible.

- State law requirements (minimal)
- [New York AG Best Practices](#)
- [BBB Wise Giving Alliance, Standard 19](#)
- Other industry standards
- Include at least:
 - Names of the parties
 - Dates of the campaign
 - Amount per purchase to benefit charity
 - Statement of non-deductibility
 - Charity contact info and mission
 - Other material terms, as applicable (minimums, maximums, codes), etc.

Nonprofit Promotion of Campaign – Be Informed



*But they do it
that way!*

- Doing something simply to increase fundraising income doesn't negate UBIT risk
- Advertising is a substantial return benefit that may subject qualified sponsorship payments to UBIT
- Be careful (mindful) when promoting a CCV's campaign; UBIT is OK, within limits, but know the rules
- To avoid UBIT, consider whether the return benefit given to a sponsor is either:
 - of *insubstantial value* or
 - otherwise considered *use or acknowledgment*

Know How the IRS Views Advertising

Use and Acknowledgment

- ✓ Acknowledging the corporate sponsor by using its name or logo
- ✓ Providing value neutral descriptions of a corporate sponsor's services or products
- ✓ Providing the sponsor's contact information (e.g., online, social, etc.)
- ✓ Publishing a "thank you" statement and/or acknowledgment regarding a sponsor's support or philanthropic goals

Advertising

- ⊗ Encouraging or inducing consumers to purchase a sponsor's products or services
- ⊗ Endorsing or advertising a sponsor's products or services
- ⊗ Making statements with qualitative or comparative descriptions of a sponsor's products or services
- ⊗ Providing price information for a sponsor's products or linking directly to a sales page
- ⊗ Featuring, linking to, or reposting a sponsor's cause marketing spot containing a direct call to action

Customer Donation Programs

- Retailers offer *in-store* customers chance to donate (flat amount, round up the change, matching, etc.)
- Not a typical CCV arrangement; consider charitable trustee rules
- Ensure 100% of customers' donations are transferred to the charity to avoid professional fundraiser status
- Agreement should provide license to charity's name and marks, outline payment terms, accounting, limits on donations (\$249.99 or less?), limited agency to handle contributions
- Disclosures should include, at least, amount to be transferred and charity's name, mission, and contact information

SEE HOW FAR YOUR MONEY CAN GO

Put planet-saving on autopilot

Reforest while you shop

With your Aspiration debit and credit cards, you'll be able to plant a planet-saving tree with every purchase you make simply by rounding up to the nearest dollar. Our Aspiration community plants more trees than there are in New York's Central Park every day.

We work with leading reforestation partners around the world so that our tree initiatives restore and protect biodiversity, enhance native ecosystems, and support local communities. Our planting locations include Kenya, Mozambique, Madagascar, Honduras, Brazil, and here in the U.S.—with more locations and projects on the way.

But . . . Evolving Rules for Online Giving Platforms

- Charitable solicitation laws were developed prior to the internet, and even with the Charleston Principles, online fundraising efforts have not always had a clear path to compliance (e.g., web-based round-up programs, charitable sweepstakes, choose-a-charity campaigns, etc.)
- California enacted AB 488 last fall, regulating **charitable fundraising platforms, platform charities, and beneficiary charitable organizations**
- A charitable fundraising platform is, generally, any entity that uses the internet to provide a website, service, or other platform to persons in this state, and performs, permits, or otherwise enables acts of solicitation to occur
- Will require registration and reporting; specific disclosures; and administrative obligations (like transferring funds “promptly,” verifying the “good standing” of beneficiary organizations, etc.)



There Will Be a Fair Bit More to Do Now – in CA

Under the proposed regulations, a “*commercial charitable fundraising platform*” would:

1. **Register** with California before starting the campaign and **pay the fee**
2. Verify that each charity partner is in **good standing**
3. Either obtain **written consent** from each benefiting charity **or** make certain disclosures related to not having the charity’s consent (written agreements would be subject to certain requirements)
4. Provide **conspicuous disclosures** before the customer donates (very detailed requirements)
5. Hold funds raised in a **separate account**
6. Provide donors with a **tax donation receipt** within 5 days of the donation being made
7. Transfer funds **promptly** (generally within 15 days of the donor’s donation) to the charity
8. Concurrently send the recipient charitable organization an **accounting**, including specific details
9. Provide **written notice** to persons who caused a donation to be made within 15 days of transferring the donation to the charity unless the person opted out of receiving such notices
10. File a **report** annually by July 15 for fundraising efforts occurring during the preceding calendar year

What Does AB 488 Mean for Your Nonprofit?

■ Platform Charities

- Those who facilitate solicitations on charitable fundraising platforms through express or implied granting efforts (e.g., donor-advised funds)
- Together with recipient charities (below) will be considered “trustees” or “charitable corporations” under Cal. Gov. Code § 12582, 12582.1
- May need to provide tax donation receipts to donors, obtain written consent, etc. in some cases

■ Recipient Charities

- Named or expected beneficiary from platform activity
- Determine whether required to register with the California Registry of Charitable Trusts
- Review agreement (if any) with platform / platform charity for compliance with required terms
- Monitor references to your organization if platform proceeds without written consent
- Determine scope of shared donor information, as applicable

■ Practical Considerations: Unclear how rules will affect companies’ plans to support nonprofits

- Companies may need more time to implement technical changes to meet new rules
- Thus, fundraising efforts could be slowed (at least temporarily) leading up to Jan. 1, 2023

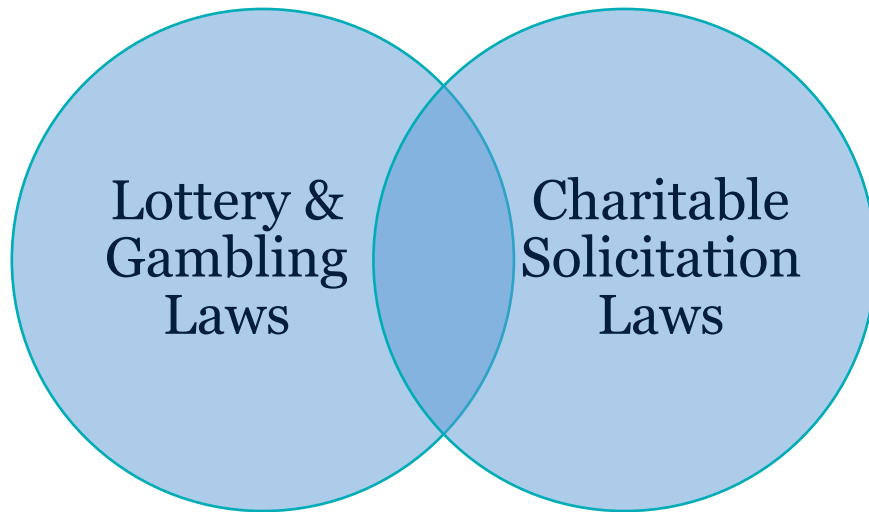
Side Bar

The California Department of Justice held a public hearing on the proposed regulations last week and the period for submitting written comments has closed.

Greater discussion of the parameters of the proposed regulations is [available on Venable's website](#).

A presentation that included comments on how the new regulations might affect brands, including their new disclosure obligations, is available on Venable's website ([Evolving Trends in Cause-Related Marketing: Keeping Your Company in Compliance](#)).

Charitable Raffles and Sweepstakes



- Federal and state laws prohibit privately run lotteries, which have the following elements:
 - (1) The awarding of a **prize**
 - (2) By **chance**, where
 - (3) Participants must submit **consideration** to enter
- Charitable raffles are lawful in most states subject to registration and other requirements for charitable gaming.
- However, multi-state online raffles aren't possible, because of state law restrictions, so pivoting to charitable sweepstakes may make sense.
- For lawful prize promotions, legal requirements for advertising disclosures/rules are extremely specific
- Significant overlap with traditional sweepstakes (rules, specific terms/material terms, disclosures, registration, and bonding, if applicable)
- But also forces consideration of charitable solicitation laws

The Rising Popularity of Charitable Sweepstakes

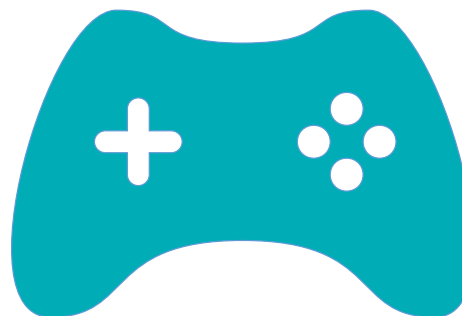
- Increasing popularity of sweepstakes offered by nonprofits, or commercial entities working with nonprofits
- What laws apply?
 - Fla. Rev. Stat. § 849.0935 – explicit (unique) exception to lottery laws for nonprofit sweepstakes
 - Professional fundraiser laws – be careful to avoid inadvertently tripping
 - California Penal Code § 320 and the CA attorney general settlements/cease and desist letters with charitable sweepstakes websites
- But this is **different from** . . .
 - A commercial co-venture campaign, which involves a purchase and donation and may trigger registration, bonding, contract, and accounting requirements
 - A raffle, which is restricted to nonprofits and subject to specific statutory requirements, including registration, residency, prize limits
 - An auction, which may be subject to state auctioneer laws

Compliant Charitable Sweepstakes

- **Comply with sweepstakes laws and charitable solicitation laws, plus best practices**
 - “No donation required” method of entry should be clearly/conspicuously disclosed near method of entry; other required disclosures should be made
 - Charity should provide consent to use its name and marks, give it approval rights over uses
 - Arrange for “prompt” transfer of donations or, better yet, have donations routed directly to charity
 - Ensure charity is in “good standing” with applicable state and federal authorities
- **Follow state law (California AB488) / PPGF Settlement frameworks for disclosures, as applicable**
 - Make “unavoidable and prominent” disclosure whether fees are charged on donations raised (and how much is charged) and/or circumstances surrounding use of intermediary charity to process donations
 - Conspicuously disclose the name, contact information, and tax-exempt mission of the charity to which donations will be made and other material terms
 - Disclose (and confirm) whether the charity has been reviewed for compliance with applicable law(s)
 - Ascertain whether, and with whom, potential donors’ contact information will be shared
 - Is the donation tax-deductible? (Usually not with sweepstakes)

eSports and Charitable Promotions

- *“When you register to play in the XYZ Tournament, XYZ Sponsor will donate 25% of your registration fee to ABC Charity”*
- *“Over the next two hours, I want to raise \$300,000 for the ABC Charity. Donate through my livestreaming page so we can support their mission of . . . ”*
- Video game competition that may be online or live; prizes in **contests** are awarded on the **basis of skill**
- Gamers (or their sponsors) pay to enter competitions with top-dollar prizes; can also make money through advertising income, subscriptions
- State legislative action to recognize eSports formally
 - Maryland Criminal Law § 12-114: permits an “organization conducting an eSports competition [to] offer prize money or merchandise to winning participants in an eSports competition.”
- Can raise a host of legal issues like gambling and lottery laws, consumer protection rules, charitable solicitation laws, IP transactions/licensing, immigration, tax, etc.



NFTs

A **non-fungible token** is proof of ownership of a unique digital asset that is made possible because the purchase and sale happens through a blockchain.

- Contract to include IP license/consent; details on payment amount, guarantees, transfer, and costs; accounting of sale(s); etc.
- Disclosures: Any fees deducted from amount donated (*e.g.*, opening wallet)? Charity name and contact information?
- Often structured as a charitable auction; could be considered a charitable promotion (raising CCV compliance considerations)

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Introducing NFT(P) by Charmin. 🎨

Sometimes a better bathroom experience goes beyond the seat, that's why we're rolling out the first-ever NFT art by a toilet paper brand!

Bid on the digital art using the link below. All proceeds donated to [@directrelief!](#)

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8:05 AM · Mar 17, 2021 · Twitter Web App

141 Retweets 779 Quote Tweets 470 Likes

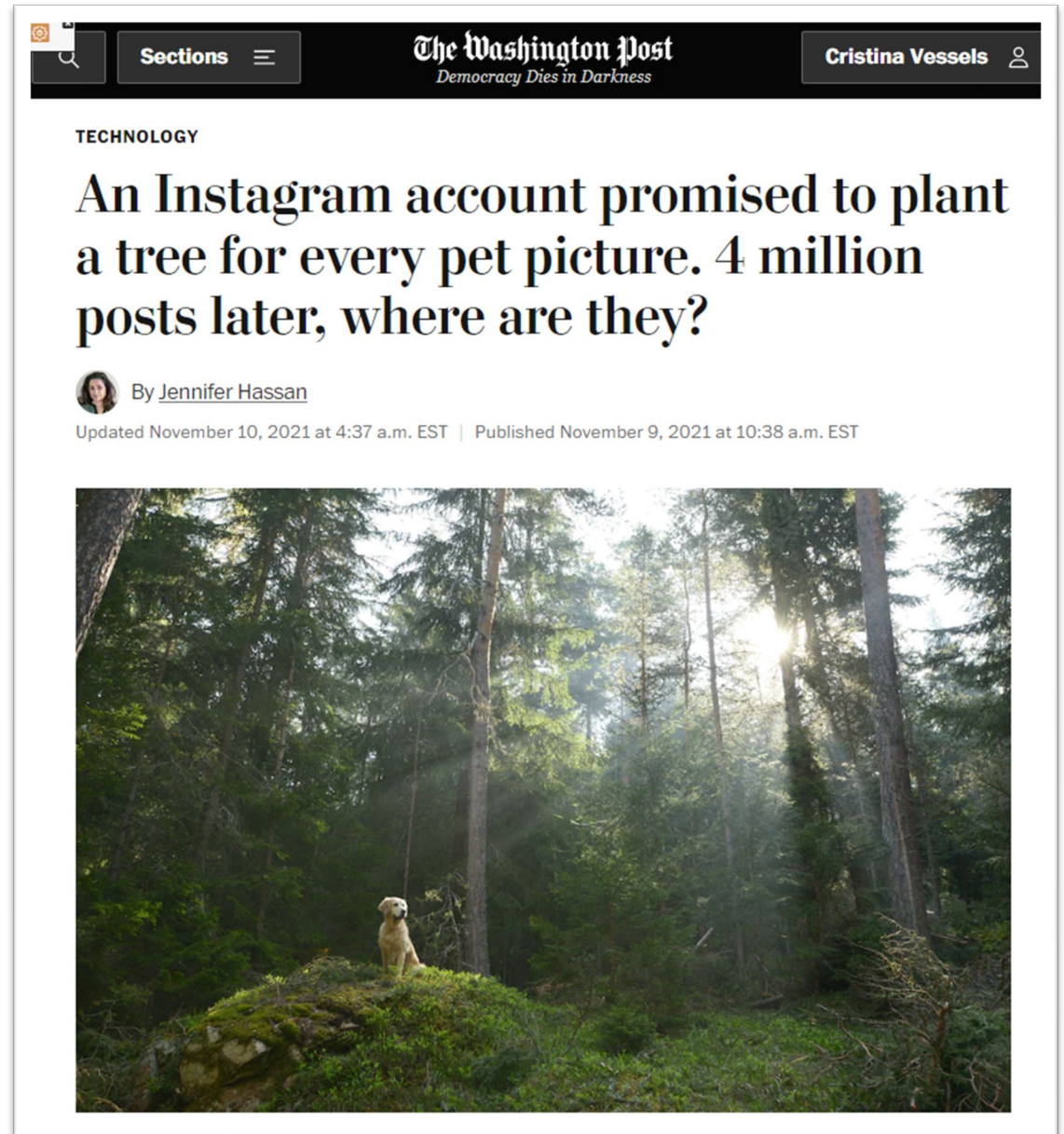
Non-Fungible Tokens (NFTs) and Cryptocurrency

Increasing use of NFTs and cryptocurrency as prizes in sweepstakes may trigger unique issues:

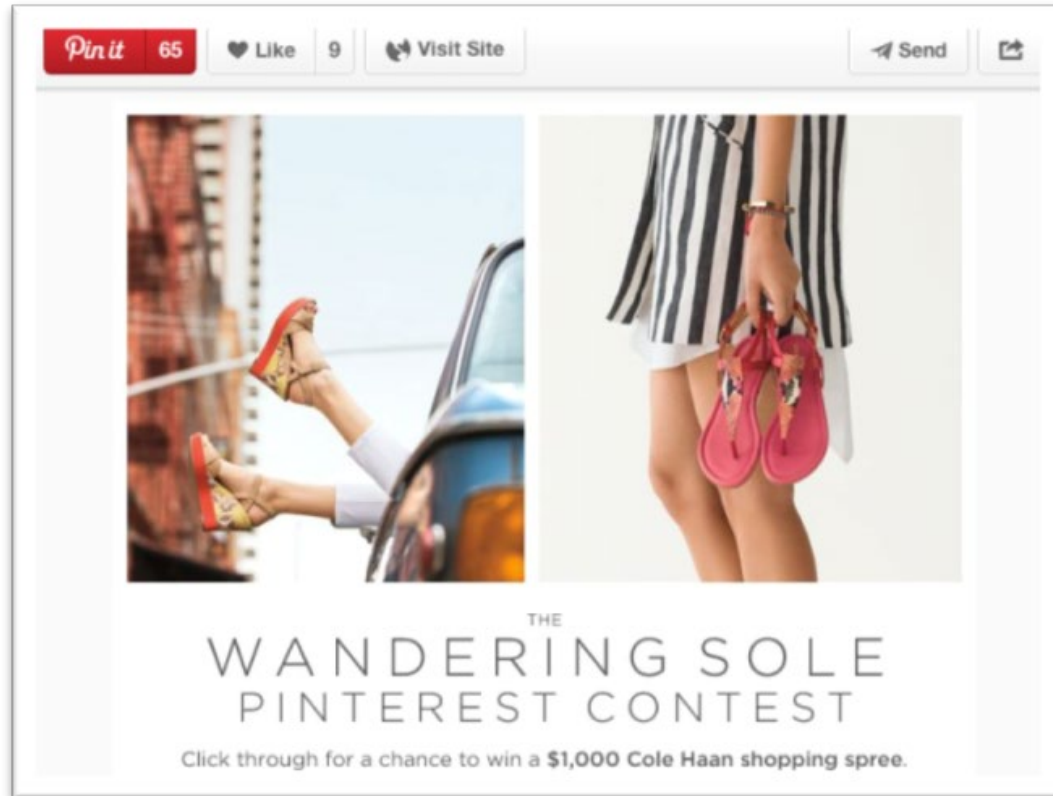
- **Terms and conditions:** Make sure your audience understands what you are talking about; need for clear definition of terms particularly important with sweepstakes
- **Intellectual property:** Nature of NFTs as unique, one-of-a-kind digital files, which may trigger IP considerations regarding copyright and reproduction rights
- **Sweepstakes:**
 - **Consideration:** For sweepstakes, fees, requirement to purchase an NFT or cryptocurrency may be consideration and may trigger lottery laws. May provide free AMOE, but must clearly and conspicuously disclose it. *See Suski v. Coinbase Global, Inc.*
 - **Prize:** Cryptocurrency may rise and fall in value over the course of a sweepstakes, and NFTs may have no value at all, except as determined by the secondary market
 - **Chance:** Is there inherent randomness in numbering of NFTs? What about exchanges where certain NFTs are signed or have specified characteristics—is there chance there?

Staying in the Clear

- Monitor third-party uses and promises made (both privately and publicly)
- Gives an opportunity for your nonprofit to ensure brands are staying within the bounds of contracted terms
- Maintain authority to review marketing assets featuring your name and marks
- Consider influencers and social as well



FTC Endorsements Rule Disclosure Requirements



- **Basic rule:** Per FTC's Endorsements and Testimonials Rules, if an endorser (e.g., influencer) received material consideration for talking about a product on social media, it should be disclosed
 - FTC is updating rules to address new technologies and developments right now
 - States take same approach/enforce rule as well
- **Sweepstakes/Contests Corollary:** Must require sweepstakes entrants to include disclosure indicating their entry (tweet, post, etc.) has been incentivized. Acceptable disclosures/hashtags include:
 - #[company]Sweepstakes
 - #contestentry
 - #ad or #promotion
 - NOT #sweeps or other abbreviations
- Employees should also disclose connections

Recent NAD Decisions

The National Advertising Division, the self-regulatory arm of the BBB, is looking at statements about charitable commitments and seeking to ensure the money is going where the brands say it is, and companies creating CCVs and charitable giving campaigns should be prepared to provide documentation to support their claims. NAD evaluated and found the following were substantiated:

- **DoorDash, Inc.:** *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.* NAD found substantiated.
- **Niantic, Inc.:** We're donating proceeds from gaming competition ticket sales, with a minimum commitment of \$5M to support, 50/50 "black gaming" and US nonprofit organizations; \$100K to nonprofit supporting human rights of Black transgender people, with an employee match up to \$50K; Various contributions—some general, some earmarked—for nonprofit supporting child learning and game development

Mobile Giving and Mobile Campaigns

Telephone Consumer Protection Act

TCPA prohibits using automatic dialing systems to make calls to wireless devices without express prior consent

- Text messages included in “calls” definition
- Must have prior consent from the consumer to receive messages from that specific entity (not affiliate)
- Prior donor or membership doesn’t count as consent
- Considerable exposure/litigation on this issue

States are passing additional laws regulating telemarketing/text marketing that may be extremely restrictive as well.

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CTIA, The Wireless Association®, Guidelines for Mobile Giving via Wireless Carrier’s Bill

- Qualified/accredited charities may lease short codes from Common Short Code Administration at 60% reduction to published rates
- Must comply with Mobile Marketing Association’s guidelines and provide consumers with a separate opt-in for each type of activity
- Campaigns subject to certain limits (e.g., no gaming)

Carrier Rules may have more requirements for engaging in mobile giving campaigns – size of charity, years in existence, etc.

Privacy Issues

California Consumer Privacy Act (CCPA) applies to any company that (a) has \$25 million or more in annual sales that (b) buys, sells, or shares information on 50,000 or more individuals, households, or devices, and (c) derives more than half of its annual revenue from selling personal information. It provides consumers with specific rights regarding their personal information:

1. The right to know
2. The right to opt out
3. The right to control and be forgotten
4. The Right to Exercise Privacy Rights Without Prejudice

While the CCPA does not apply to nonprofit organizations, it does apply to the companies with which they do business. Additionally, nonprofits should anticipate changes in supporters' expectations for how their private data is handled.

Final Charitable Fundraising Compliance Considerations

- Who has custody and control of the funds raised?
- Will the company, an influencer receive or retain any amount from the funds raised?
- If funds do not pass directly to your nonprofit's account, how and when are funds received from a separate corporate account?
- Have you agreed on disclosures (and rules, if applicable) and where/how they'll appear?
- How will donor details be shared for purposes of issuing contemporaneous, written acknowledgments (if applicable)?
- Have the parties confirmed applicable state registration, bonding, and related filing requirements?
- Has your nonprofit considered UBIT implications of potential return benefits (e.g., advertising)?



Questions?



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