



Building a Strong Foundation

Basics of Prize Promotions and Cause-Related Marketing

Cristina I. Vessels

Counsel | 202.344.4706 | CVessels@Venable.com

Shannon E. Sansom

Associate | 212.218.2254 | SESansom@Venable.com

VENABLE LLP

Know Your Building Blocks



If you know the **legal framework** for your campaign,



And understand the **responsibilities** incident to this,



You'll be able to launch **quickly and creatively!**

We'll Cover

Sweepstakes organization and satisfaction of legal requirements

Rules and disclosure requirements for social media platforms

Mobile marketing and text promotions

Charitable prize promotions

Charitable sales promotions and commercial coventurer activity

Free action campaigns

Customer donation programs

Developing and Executing Compliant Prize Promotions

Understanding Legal Requirements and Obligations

How Do We Evaluate a Promotional Concept?

- The first step in evaluating any promotion is ensuring that it is not an **illegal lottery**
- Lottery = three elements:
 1. A **prize** is awarded;
 2. Winners are determined on basis of **chance**; and
 3. Participants must submit **consideration** to enter (something of value, e.g., payment, purchase, or expenditure of time or effort)
- Some states prohibit even non-monetary consideration
- *But* a free alternative method of entry (AMOE) may solve a consideration problem, if entrants using this entry method are given equal dignity (that is, an equal opportunity to win) and the free AMOE is clearly disclosed



Consideration: What Is Permissible Non-Monetary Consideration?

- Consideration = something of value that must be given to participate
- **Non-Monetary Consideration** may render a promotion illegal in certain states – but it's not always clear what that means
- States where some form of non-monetary consideration may be permitted *without* an AMOE include Delaware, Florida, Georgia, Iowa, Kansas, Michigan, New Jersey, Ohio, South Carolina, Texas, and Wisconsin
 - **High-Risk Entry Requirements Examples:** Download of a paid app; attendance at a paid event; response to a lengthy survey; multiple visits to a location/scavenger hunt
 - **Low-Risk Entry Requirements Examples:** Short survey questions; download of a free app; requiring a social post or comment on a free platform (where permitted); watching a TV program or listening to a radio program; return postage



General Requirements for Sweepstakes

1. Official Rules and Advertising Disclosures

- Rules are required under state and federal law; should be readily available to all participants and include details such as eligibility, prize details, how to enter, start and end dates, odds, etc.
- Certain “material terms” disclosures are required in all advertising: eligibility, dates/deadlines, sponsor info
- Florida game promotion regulation provides good rules of thumb for material terms disclosures (FL Adm. Code Sec. 5J-14.0001), but other states may have different requirements (e.g., prize value, odds)
- Some social media sites have their own rules, requiring special disclosures and releases
- Generally, it’s a good idea to also include publicity and liability disclaimers and releases, the right to modify rules, and a link to the sponsor’s privacy policy

General Requirements for Sweepstakes, Continued

2. Registration and/or Bonding

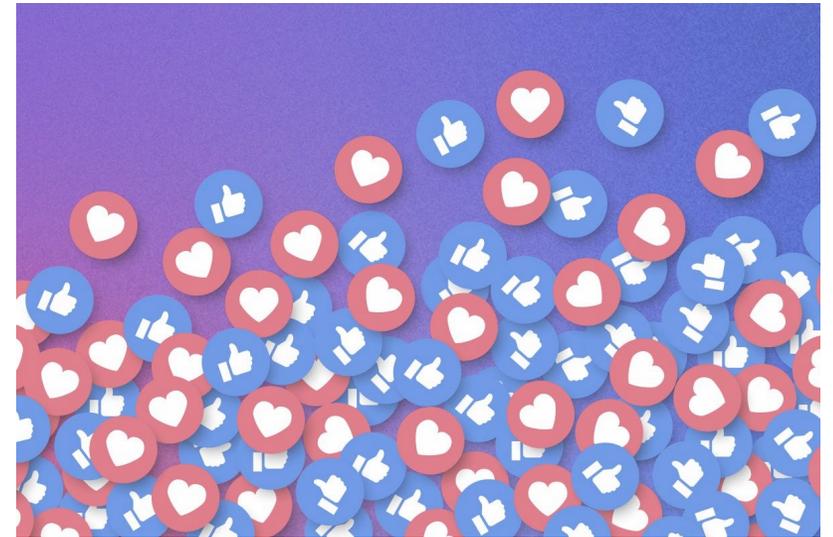


- Sweepstakes with a total prize value over \$5,000 must be bonded and registered in New York and Florida
- Sweepstakes with a total prize value over \$500, and where a retailer is offering the opportunity to win, must be registered in Rhode Island
- Additionally, certain types of “amusement gambling” intellectual skill contests where a purchase is required for participation must be registered in Arizona

General Requirements for Sweepstakes, Continued

3. Social Disclosures

- For sweepstakes and contests on social media, entrants must include a disclosure, most commonly a hashtag, in all entries, including posts used for entry
- The disclosure must identify the post as an entry in a clear manner — e.g., #[brandname]SweepstakesEntry or #[brandname]ContestEntry
- **#Sweeps, or a similar abbreviated disclosure that does not clearly identify the incentivized relationship, will not satisfy the FTC requirement**
- Employees who are allowed to participate should also disclose their employment connection



General Requirements for Sweepstakes, Continued

4. Posting

- Some states, such as New York and Rhode Island, require that the official rules and/or winners' list be posted for public viewing
- Other states require the posting or provision of official rules and/or winners' lists upon request
- Some states also require the winners' lists to be filed with the state, upon the conclusion of the sweepstakes and within a defined period of time



Taxes

- If the value of the prize awarded in connection with a promotion that does not require payment to enter is **\$600 or greater**, the sponsor will have to report the prize value to the IRS by filing a 1099-Misc.
 - If the prize has no readily available retail value, value may be calculated using any good-faith, reasonable method
 - If the promotion does involve the payment of entry fees, the sponsor should consult with tax counsel
- To file a 1099-MISC, the sponsor will need to acquire the winner's Social Security number or tax identification number (gather this by providing the winner with a W-9 form)
 - The 1099-MISC must be postmarked by January 31 of the year following the year in which the winner receives the prize
 - For example, if a person won a prize in May 2024, the 1099 should be mailed no later than January 31, 2025

Platform Rules for Promotions (the Basics)

Facebook

- You **MUST** include a specific release: Facebook is not affiliated with or a sponsor of this promotion
- You **MUST NOT**:
 - “Likegate” a promotion;
 - Conduct prize promotions through users’ personal pages or timelines;
 - Require people to post content on their personal timeline, share content, or tag themselves in content where they do not appear—no “share on your timeline to enter” or “share on a friend’s timeline for additional entries”
- Any user-generated posts or content must include hashtag disclosures (such as #[Sponsor]Sweepstakes”) to disclose the purpose behind the post

Instagram

- You **MUST** include a specific release: Instagram is not affiliated with or a sponsor of this promotion
- You **MUST NOT** ask or allow users to tag themselves or others in content/photos in which they do not actually appear
- Any user-generated posts or content must include disclosures (such as #[Sponsor]Sweepstakes”) that indicate that the post is associated with a branded sweepstakes

Platform Rules for Promotions (the Basics), Continued

Twitter

- Expressly prohibits “**spammy**” promotions, where users are encouraged to repeatedly repost or retweet a post and/or create multiple accounts to engage with a brand or promotion
- Any user-generated posts or content must include disclosures (such as #[Sponsor]Sweepstakes”) that indicate that the post is associated with a branded sweepstakes

TikTok

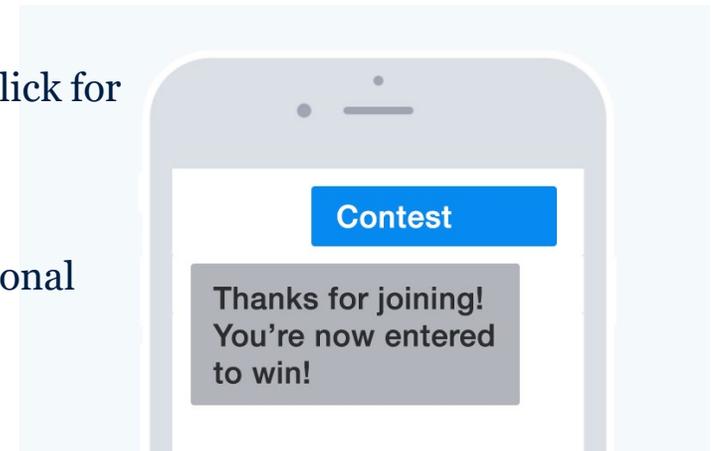
- Also prohibits “**spammy**” promotions
- Any user-generated posts or content must include disclosures (such as #[Sponsor]Sweepstakes”) that indicate that the post is associated with a branded sweepstakes

Threads

- No policies yet – there aren’t any branded content tools available yet, either – but the guidance being offered is to follow the Instagram rules, and make similar disclosures regarding sponsorship

Mobile Marketing and Text Promotions

- Under federal law (TCPA), marketer must obtain ***express prior written authorization*** to send marketing messages via text message. This applies to prize promotions as well.
 - Large and/or private class actions are a big risk here: *Hamza v. Dunhams Athleisure Corp.*, No. 16-11641, 2017 U.S. Dist. LEXIS 41074 (E. D. Mich. Mar. 22, 2017): Alleges Dunham’s sent Hamza and a proposed class unauthorized text messages in connection with a promotional sweepstakes. Hamza recently won a motion to dismiss.
- **How do you make adequate disclosures with limited space available?**
 - FTC Dot.com Disclosures provide guidance; FTC has issued mobile privacy guidelines
 - FTC has stated promotions/disclosures must be mobile-optimized
 - Recent Instagram influencer guidance—disclosures must be made before “click for more”
 - Disclosures in rules as well
 - Trade association guidelines include industry protocols for signup, and additional disclosures in rules



Other Types of Promotions – Skill Contests

- **Skill Contests = Prize promotions where winners are selected on the basis of skill**
 - Consideration is typically permitted, except that some states (e.g., AZ, MD, CO, ND) prohibit or restrict a purchase or payment requirement even in skill contests
 - Most common type of skill contest is a user-generated content (UGC) contest
 - Rules requirements are typically similar to those of sweepstakes
- **Remember, for UGC contests:**
 - Include entry/content guidelines and moderation
 - Keep winner selection fair and neutral (an unbiased panel of qualified judges should be used, where applicable)
 - Consider and adhere to FTC Endorsements and Testimonials Guides
 - Provide for IP releases, as needed
 - A tie breaker should be provided for within the rules (chance should not be present in winner selection)



Other Types of Promotions – Surprise and Delights

Surprise and Delight promotions are promotions where free gifts are given away to consumers – **but neither the free gifts nor the promotion is advertised before gifts are distributed.**

- If the gifts really aren't promoted prior to distribution, there is no “call to action” that consumers are asked to accept
- The more the Surprise and Delight promotion is talked about in advance by the advertiser, the greater the risk that it triggers legal disclosure requirements
- Remember: If these types of promotions are run frequently by one Sponsor, or there is a predictable pattern, the promotion may venture beyond Surprise and Delight and require typical sweepstakes disclosures and compliance elements

Suggested Best Practices:

- Avoid pre-announcement of the promotion or complex requirements for participation
- Consider giving recipients of prizes clear guidelines about what to post/not to post on social media when discussing the promotion
- Ask for signed releases from prize/gift recipients for use of images/content

Other Types of Promotions – Charitable Involvement

Charitable Raffles

- Promotion where a charitable organization sells tickets or accepts donations in exchange for entrant's chance to win
- Prizes usually include either a portion of the money collected, or a predetermined prize
- Charitable raffles are not permissible in every state, and the states that do allow them generally implement nuanced registration and administration requirements
- A state-by-state analysis is important to ensure compliance

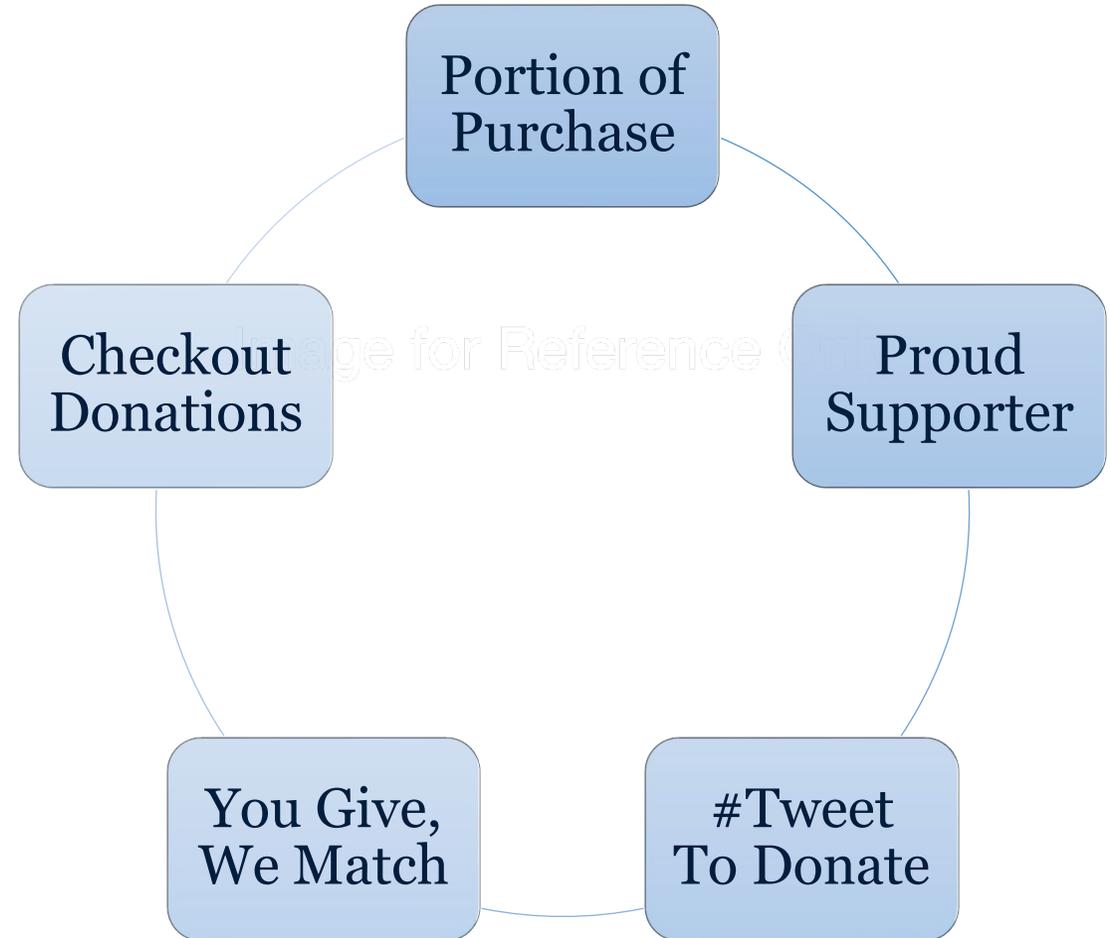
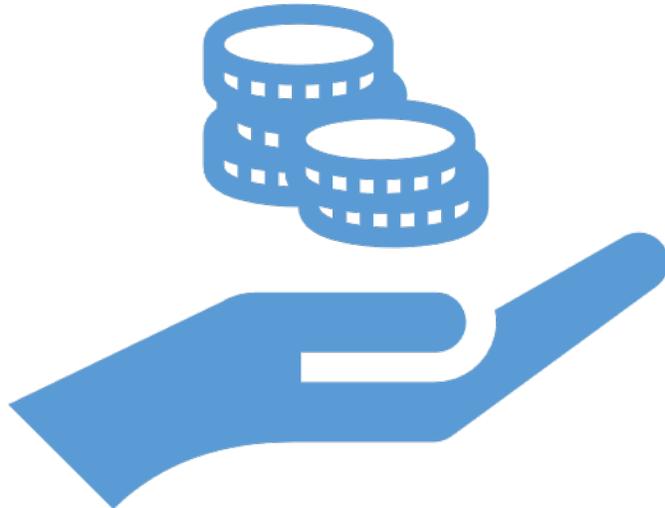
Charitable Sweepstakes

- Instead of requiring payment for entry, a sweepstakes can be conducted where entrants can enter **either** by providing a donation, **or** by entering through a free AMOE
- All of the same requirements for traditional sweepstakes will apply
- The charitable organization associated with the sweepstakes will need to comply with all charitable fundraising requirements, including those applicable to registration and donation reporting

Marketing Your Brand's Charitable Giving

Understanding Cause-Related Marketing Campaign Structures

Cause Marketing Is an Umbrella Topic



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

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CCV Compliance

Pre-Promotion

Contract with charity (“written consent”), include state-required terms

Register, post bond, and provide notice, as required

Evaluate whether your company must submit CCV filings, bonds, etc.

Post-Promotion

Provide accounting to the benefiting nonprofit

Provide payment to benefiting nonprofit according to state timelines

File summary reports with states, as needed

Retain records for state-specified periods (usually 3 years)

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 (minimums, maximums, discount codes), etc.

“Free” Actions

- Public not required to buy any product or use any service because the donation is triggered based on a free action
- How does the state define a commercial coventurer? Do “events” other than sales qualify as charitable sales promotion activity?
- Generally, follow the CCV campaign rules, including for disclosures
- Consider social media and other platform rules may apply on top of charitable fundraising regulations



This Earth Day, Help Us Plant Trees

At TimberTech, we prevent deforestation all year round with our sustainable decking. And this Earth Day, we're celebrating our planet by planting trees.

Here's how you can help:

1. Log in to your favorite social media platform.
2. Like or share our Earth Day post.
3. We'll plant a tree on your behalf.

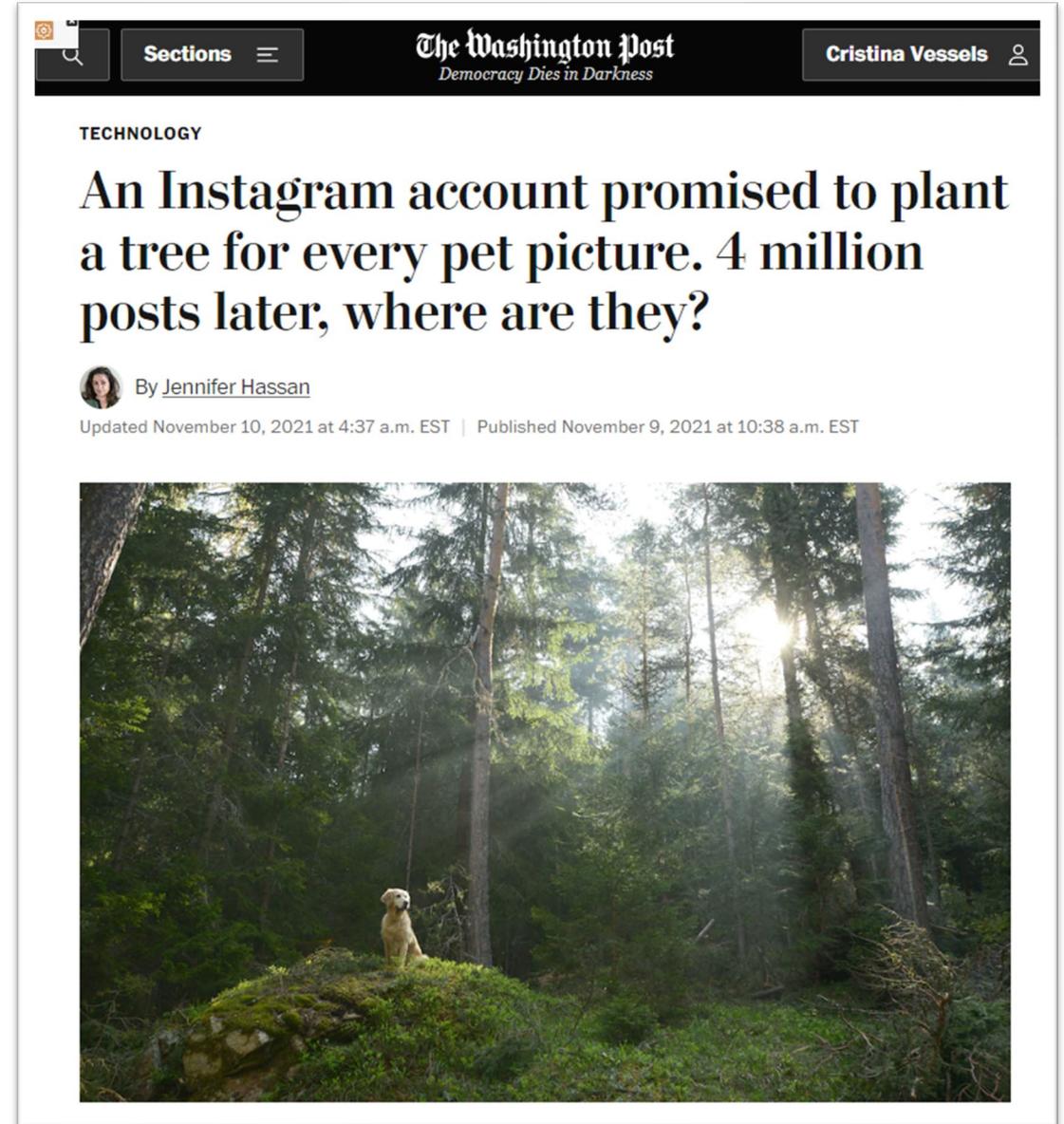


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Keep Your Promises

Substantiate  Your  Claims 

- Executed contracts (and note you need this for charitable solicitation law purposes, too!)
- Donation acknowledgment letters
- Invoices and other records (especially critical for in-kind contributions)



Customer Donation Programs

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

Shopping Cart

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Shipping



Crosby Mirror, Brass, Round, 36"
#84-6863282

\$499

1

[Update](#)

Item Total
\$499

[Save For Later](#) | [Remove](#)

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A Word of Caution

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
KEVIN McCABE,

Plaintiff,

v.

CVS HEALTH CORPORATION
and CVS PHARMACY, INC.,

Defendants.
-----x

RACHEL P. KOVNER, United States District Judge:

Plaintiff Kevin McCabe donated money to the non-profit American Diabetes Association (“ADA”) through a point-of-sale solicitation at a CVS pharmacy. According to plaintiff, that solicitation was part of a fundraising campaign conducted pursuant to an agreement between the ADA and defendants CVS Health Corporation and CVS Pharmacy Inc. (collectively, “CVS”).¹ CVS promised in the agreement to raise money for the ADA from pharmacy customers, while also agreeing that if it ultimately failed to raise at least \$10 million, CVS would make up the shortfall with a donation of its own.

MEMORANDUM AND ORDER
22-CV-3116 (RPK) (RML)

VENABLE LLP

THE WALL STREET JOURNAL.

Just Like Tip Prompts, Requests for Donations at Checkout Are Everywhere

As retail donation campaigns proliferate, consumers say they are less likely to give money while shopping

By Rachel Wolfe [Follow](#)

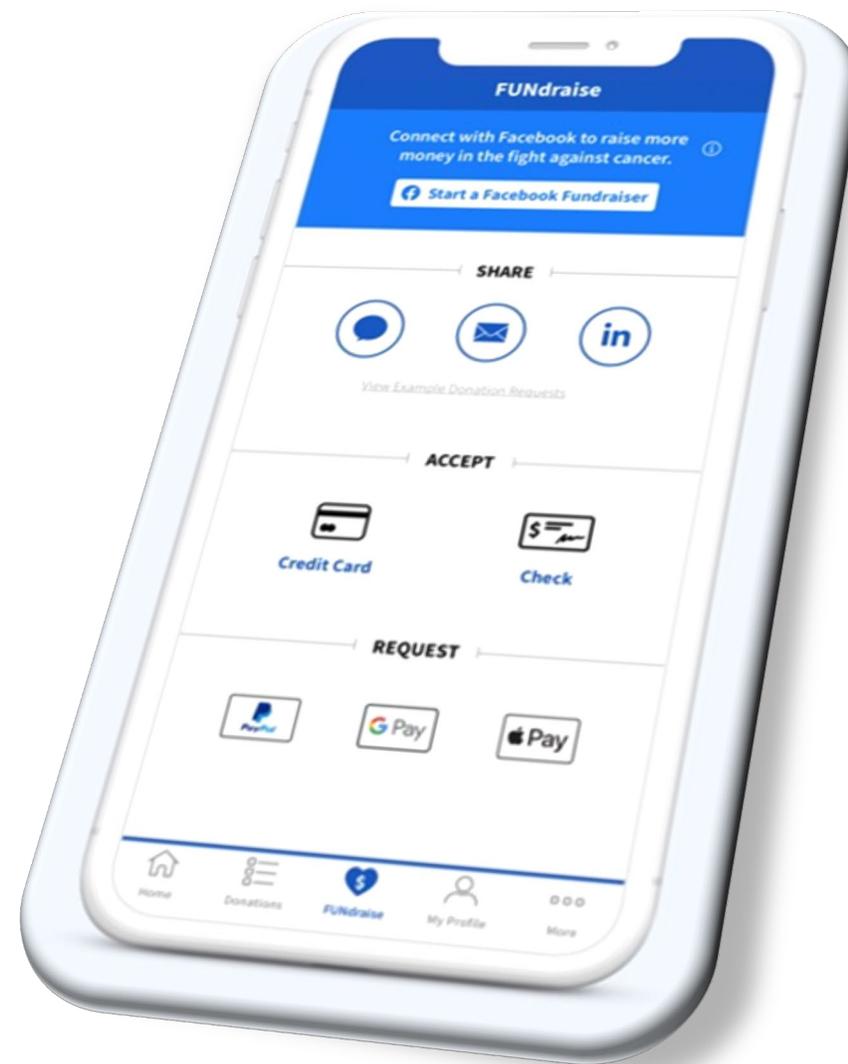
Updated Aug. 29, 2023 2:01 pm ET

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Evolving Rules for Online Giving Platforms

- California AB 488 went into effect January 1, 2023, and it regulates **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
- Types of activities include: commercial, peer-to-peer, marketing, consulting, and coventuring-style fundraising efforts and activities



How Might AB 488 Affect Your Company's Efforts?

Imagine. . . Company X sells widgets on its website and gives customers the option to round up the value of their purchases to benefit one of a few charities as selected by the customer. Company transmits the donor's round-up change to the chosen charity directly and does not use a platform charity as an intermediary.



Well, There's a Fair Bit More to Do, But for Now . . .

As of January 1, 2023:

- Charitable fundraising platforms and platform charities should **ensure compliance with the law's good standing requirements** for charities
- **Donations must be maintained in an account separate** from other funds belonging to a charitable fundraising platform or platform charity
- Charitable fundraising platforms and platform charities are **required to make disclosures** that prevent the likelihood of donor deception or confusion, when applicable
- Comply with the requirements for when you **solicit for “non-consenting” charities**

Charitable Fundraising Platform Disclosures

Some Differences from PPGF

100% of donations made here go to charity, no deductions, no fees

PayPal Giving Fund Donating Details

← Back

Choose an amount or enter your own


WOMEN FOR AFGHAN WOMEN

Women for Afghan Women
International, Human Services

More details

Set as favorite charity

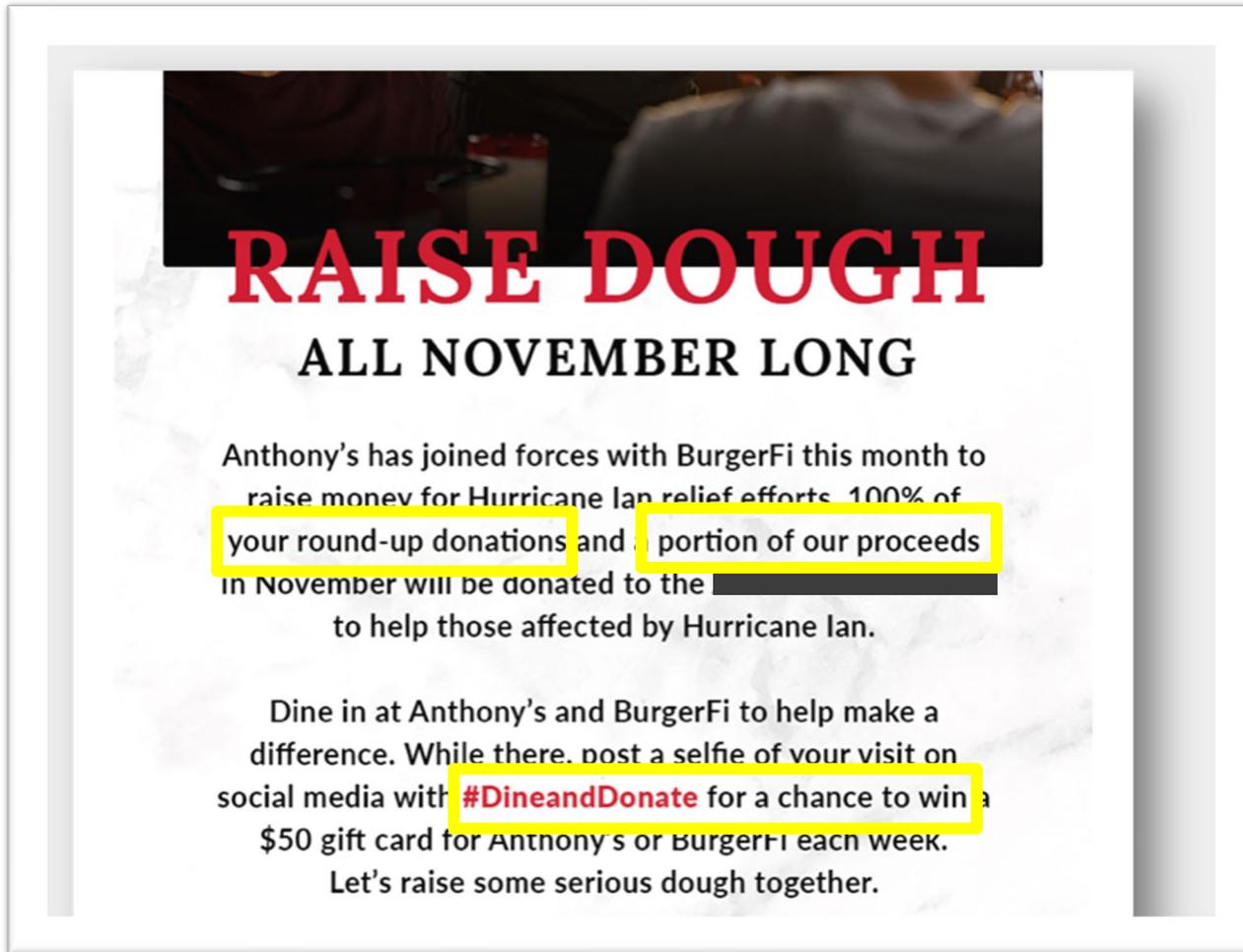
\$25 \$50 \$75 \$100

Share my name and email with this charity.

Donate Now

- PayPal covers all transaction fees.
- You're donating to PayPal Giving Fund, a 501(c)(3) charity, **subject to its terms.**
- Donations can take **up to 45 days** to get to your chosen charity. It's rare, but if **we can't send your money to this charity**, we'll ask you to recommend another.
- If we can't reach you, we'll send it to a similar charity and keep you updated. Your donation is typically tax-deductible in the US.

Final Considerations



Make Your Plan

- Educate marketing teams
- Align on internal protocol and policies
- Assess compliance obligations
- Obtain consent from the charity
- Confirm flow, custody of funds raised
- Register, post bond, report, as needed

Questions?



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Associate, Venable LLP

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