

Raise Money, Not Risk

legal considerations in fundraising

SPEAKER: Kristalyn Loson, Esq.

VENABLE, LLP



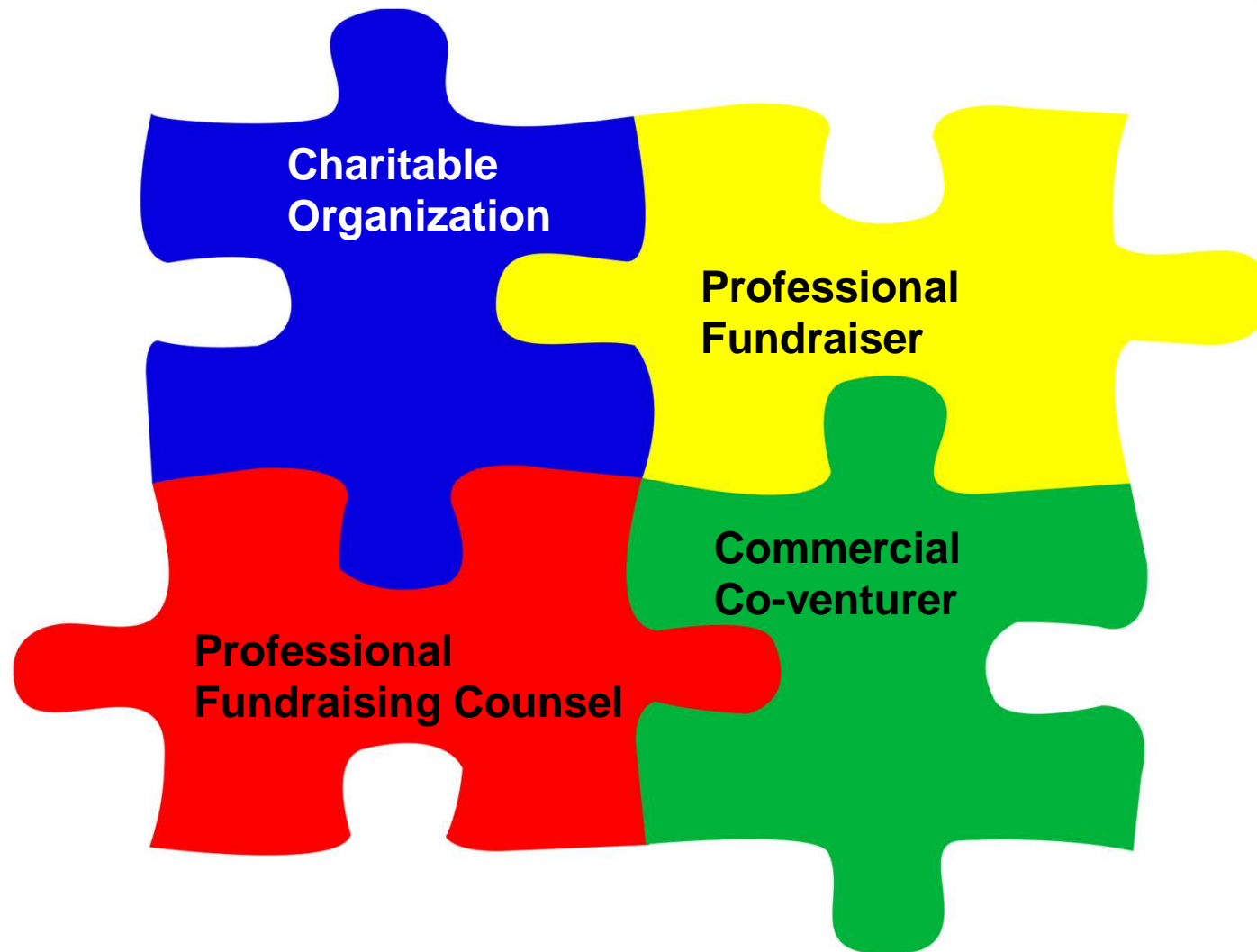
Road Map



- State Regulation of Fundraising
- Passive Internet Solicitation
- Working with Professional Fundraisers
- Commercial Co-venture Opportunities
- Surfing the Crowd
- Raffle & Sweepstakes
- Red lights



How States Regulate Fundraising



Charitable Organization Specifics



- Registration trigger = **“Solicitation”**
 - Affirmative act of asking for a gift (contribution); or
 - Selling goods / services on the representation that will benefit a charitable cause
 - Whether or not successful
 - In some states may include grant solicitation
- Broad – **“by any means”**
- Unified Registration Statement
 - Currently accepted by 36 states
 - Not really uniform

Registration Requirements



- Registration Application
 - Form 1023
 - Latest Form 990
 - Annual Financials
 - Certificate of Good Standing
 - Application Fee
- Annual Reporting Requirements / Renewals
- Disclosures When Soliciting
 - Identification of Organization / Where Public Reports can Be Obtained

Fundraising on the Internet



Charleston Principles – Requires registration for passive Internet solicitation if:

- **Organization is domiciled in state**
- **Offline activities** would be enough to assert jurisdiction (e.g. – send letter or make phone calls into state)
- Solicit donations on Internet and (1) **specifically target** those within that state OR (2) receive contributions from the state on a **repeated and ongoing basis** or a **substantial basis** through their website

Passive Solicitation Example



Southwest Beagle Brigade, an animal welfare charity, is headquartered in, has its principal office in, and holds all physical events within Texas. As part of its mission the organization provides grants to organizations throughout the U.S. The organization has a website through which it accepts donations from throughout the U.S. Some of the individuals on the mailing list for emails and for U.S. mail are located outside of Texas.

Where should BB register?



Working with Professional Fundraisers



- **Professional Fundraiser:** For a fee, solicits the general public on behalf of a charity OR has custody and control of funds
- About 41 states require registration and other requirements
- **Charities** need to (i) ensure working with a registered professional fundraiser and (ii) report professional fundraiser information on annual report

Professional Fundraisers, Cont'd.



Items for Consideration When Working with Professional Fundraisers:

- Compensation
- Intellectual Property
- Transfer of Donations
- Compliance with Laws

Commercial Co-ventures



Commercial Co-venture (“CCV”): A person who regularly and primarily is engaged in a trade or business other than the raising of funds for charities that advertises that the purchase or use of goods or services will benefit a charitable organization or charitable purpose

Also known as: cause marketing / charitable sales promotion



CCV Examples



Get \$5 to \$25 back

via Rebate Visa® Card on the purchase of a qualifying NAPA Battery, Alternator or Starter*

and Give back to the
**Intrepid Fallen
Heroes Fund**



*Select automotive and light truck NAPA Batteries, Alternators and Starters must be purchased from a participating NAPA AUTO PARTS Store or authorized installer from July 1-31, 2013. For your qualifying purchase, you may receive a Rebate Visa® Card** by mail – AND you may donate a portion (or all) of your rebate to the Intrepid Fallen Heroes Fund.

See back side for complete donation and rebate form instructions.



** The U.S. Bank Rebate Visa Card cannot be reloaded with additional funds, nor can it be used at an ATM (Automated Teller Machine). Card expires 6 months after issuance. Terms and conditions apply and other fees may apply to Rebate Cards. For complete terms and conditions, see the "U.S. Bank Rewards/Rebate Card Cardholder Agreement" received upon receipt of the Rebate Card. Rebate Cards are issued by U.S. Bank National Association, pursuant to a license from Visa U.S.A. Inc.

CCV Example



Contemplating a Commercial Co-venture



Steps for Charity

- 1) Make sure the charity has completed its own charitable solicitation registration responsibilities
- 2) Confirm the product / service fits with charitable mission
 - *Komen Buckets for the Cure (2010)*

Contemplating a Commercial Co-venture



- 3) Make appropriate disclosures (especially with minimum and maximums)
- 4) Consider activities of charity and tax consequences
- 5) Implement an agreement
- 6) Keep alternatives in mind
 - Flat Corporate Donation
 - Free Action Program

Contractual Must Haves for Commercial Co-ventures



Required by State Law

- Term of Agreement and Dates of Solicitation (Dates of Campaign)
- Amount to Be Donated (\$ or % of Items)
- Geographic Scope
- Schedule for Donations to Be Transferred
- Schedule for Reporting
- Charity Ability to Cancel

Recommended

- *Branding and Intellectual Property Terms*
- *Reps and Warrants Re: Compliance with Laws*
- *Advance Approvals*
- *Clear Tax Treatment and Description of Activities*

Focus on Disclosures



- Identification of Charity
- \$ or % per Unit to Be Donated
- Minimums or Maximums
- Dates of Campaign
- *New Balance will contribute 5% of the suggested retail price of sales from the Lace Up for the Cure® Collection with a guaranteed minimum donation of \$500,000 each year to Susan G. Komen® through 2014. The Running Ribbon and Lace Up for the Cure® are registered trademarks of Susan G. Komen®.*



A Note on UBIT (federal tax compliance)



- Generally, organizations will be exempt from income received that is *related* to the tax-exempt mission.
- BUT, subject to tax on unrelated business income (“UBI”)
 1. Trade or Business
 2. Regularly Carried On
 3. Unrelated to Tax-Exempt Mission

A Note on UBIT, Cont'd.



- **Exceptions to UBIT**
 - **Qualified Sponsorships** – “Payment...with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo” – Code 513(i)
 - **Royalty Income** – passive license of intellectual property – Code 512(b)(2)
- **Take-away** – Consider tax consequences of charity’s activities in a commercial co-venture
 - Use of name and logo v. active promotion

Crowd-sourced Fundraising



Crowd-sourced fundraising – websites allow individuals to make small donations toward a common goal or initiative of an individual or organization

- **Examples:**
 - *Indiegogo*
 - *Crowdrise*
 - *Firstgiving*
 - *DonorsChoose*
 - *Fundly*

Example Fundly


http://amazingsurfadventures.fundly.com/operation-surf?



AMAZING SURF ADVENTURES Presents

FEATURES CAMPAIGNS SIGN IN 07 SIGN UP

Amazing Surf Adventures / Operation Surf



OPERATION SURF

Honoring active duty military heroes through an epic life-changing surfing experience.


\$4,920 **\$ 20** **Please Donate**

33% of our goal \$15,000 76 days left to raise \$10,080 24 total donations

37 Supporters

Show Your Support: Email Like 94 Tweet 17 Pin it Support! 37

GALLERY



PULSE

- Tyler McNab donated \$45 5 days ago
- John Sisco donated \$25 5 days ago
- John Sisco donated \$25 5 days ago
- Shino Tanaka donated \$10 5 days ago
- Shino Tanaka donated \$10 5 days ago

Feedback & Support

100%

Crowd-sourced Fundraising



Considerations for Charity:

- 1) Charitable Solicitation Registration
- 2) Terms and Conditions
 - Is there a tipping point structure?
 - When will the donations be transferred?
 - Provision of charitable solicitation acknowledgment?
- 3) Restriction on Funds Received
- 4) Take-Down Policies

Raffles and Sweepstakes – Proceed with Caution



- Federal law and all states prohibit lotteries (except state-run lotteries). A lottery has the **following elements**:
 - The awarding of a **prize**,
 - By **chance**,
 - Where the participants have been required to submit **consideration** to enter.
- In many states, certain charitable fundraising games of chance are exempt from lottery prohibitions

Raffles and Sweepstakes, cont'd



- In states where allowed, permit or registration may be required
 - Some states have residency requirements
 - Restriction on ticket price
 - Limits on where raffle conducted and by whom
 - Distribution of proceeds of raffle
- If permit required, allow lots of time (weeks or months)





PULLING IN FOR A PITSTOP.....

Questions?

Contact Information



Kristalyn J. Loson, Associate

kloson@Venable.com

t 202.344.4522

f 202.344.8300

www.Venable.com/nonprofits

www.Venable.com/nonprofits/publications

www.Venable.com/nonprofits/recordings