

Fundraising Trends, Ventures, and Traps for the Unwary

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State Charitable Solicitation Acts

- Regulation of:
 - Charities
 - Fundraisers
 - Solicitors
 - Sales promotions

Charitable Solicitation Acts (cont.)

- Definitions
 - Charitable
 - Solicitation
 - Membership
 - Fundraising counsel
 - Professional Fundraiser/Solicitor
 - Commercial co-ventures

CSA Exemptions

- Churches and other religious organizations
- Educational institutions
- Health care institutions
- Membership organizations
- Small solicitations

Recent News

- Operation Donate with Honor (July 2018)
 - FTC and 50 states plus territories enforcement action against veteran charities
 - Over 100 coordinated actions
- New York AG settled with Operation Troop Aid Inc. for deceptive marketing in commercial co-venture (July 2018)
- New York AG files suit against Trump Fdn. For violations of state and fed law (June 2018)

Recent News *(cont.)*

- New York AG using data for enforcement
 - Excessive fundraising expenses
 - Loans to directors
 - Related-party transactions
- FTC and NASCO co-sponsored conference on fundraising regulation (2017)
- UC Berkeley Law may remove “Boalt” name for donor’s racist past

Recent News *(cont.)*

- Class action lawsuit against PayPal Giving Fund for funds withheld from small charities that did not register with PayPal – now in arbitration (Feb. 2017)
- Charity Enforcement – In 2016, Special Olympics sued PR Nutrition and its owner seeking \$270,000 in unpaid sponsorship fees.

Online Portal for State Registrations

- NASCO formed nonprofit, The Multistate Registration and Filing Portal, Inc.
- 13 State pilot program for single portal filings, long delayed
- Live “soft launch” phase for CT and GA
- www.statecharityregistration.org

Giving Trends

- Direct Mail response skews older
 - Walk/Run revenues down
 - Increase in restricted gifts
 - Donor-advised funds popular
-
- How to maintain diverse streams of unrestricted revenue?

Old is New Again

- Direct Mail →→ Email
- Direct Response TV →→ Social Media
- Celebrity Endorse →→ Influencers online
- Major Gifts →→ Gates/Zuckerberg
- Cause marketing →→ Cause marketing
- Workplace giving →→ CSR???
- Crowdfunding →→ Crowdfunding

Crowdfunding - Defined

- “The practice of funding a project or venture by raising money from a large number of people who each contribute a relatively small amount, typically via the Internet.”

Source: Oxford Dictionary, <https://en.oxforddictionaries.com/definition/crowdfunding>

Crowdfunding Example

- “Susan G. Komen[®] Launches Its First Crowdfunding Initiative To Support Metastatic Breast Cancer Research”
 - Broad access to specific program
 - Restricted gifts
 - Matched by third party
- Coolest Cooler – DOJ settlement

Crowdfunding Trends

- Peer-to-Peer requests/viral
 - Lack of control
- Via third party websites
 - Facebook eliminates fees for fundraisers
 - Competition with individual hardship campaigns
 - Donor info?
- One day giving campaigns
 - Giving Tuesday - \$177M
 - North Texas giving day - \$49M
- Rewards

Donor Advised Funds

- Popularity/criticism of commercial DAFs
- Regulation coming? IRS Notice 2017-73
- White label DAFs
 - Charitable purpose
 - Continuing donor input
 - Various structures

“Hybrid” Organizations

- Low-profit Limited Liability Company (L3C)
- Benefit Corporation
- B-Lab Certification
- For profit subsidiary of public charity
- Zuckerberg Chan Initiative (LLC structure)
- But, why?

Texas Public Benefit Corporation

- Enacted Sept. 1, 2017
- Public benefit means:
 - Positive effect or reduction of negative effect
 - Artistic, charitable, cultural, economic, environmental, literary, medical, religious, scientific or technological nature
- Name includes “Public Benefit Corporation” or “P.B.C.” or “PBC”
- Certain shareholders have derivative rights

Texas Public Benefit Corp (cont.)

- Report to Shareholders min. every 2 years
- Report includes:
 - Objectives established
 - Standards adopted
 - Objective facts
 - Assessment of success
- Cert. of Formation or Bylaws can provide more frequent reports or make them public

Cause-Related Marketing

- Cause-Related Marketing (“CRM”) is a marketing promotion between a business and a nonprofit for mutual benefit.
- CRM can include:
 - Product sales
 - Experiential marketing
 - Event participation



Commercial Co-Venture Regulations

- CRM promotions constitute “commercial co-ventures” (CCV) under various state laws
- Approx. 20 states have CCV statutes
- Specific disclosure of actual \$ or % to charity
- Some states require a written contract, filings, posting of bonds, and an accounting of the promotion
- Some businesses resist complying

CCV Regulations (cont.)

- Although the definition varies from state to state, a “commercial co-venture” is broadly defined as:

An advertising or sales campaign, conducted by someone engaged in commerce (the “commercial co-venturer”), which represents to the public that the purchase or use of the commercial co-venturer’s goods or services will benefit a charitable organization or purpose.

Better Business Bureau - Standard 19

- BBB Wise Giving Alliance - 20 Standards for charity accreditation
- At the point of solicitation, disclose:
 - \$ or % of purchase price to charity for each product sold, actual or anticipated
 - “profits” or “net proceeds” is insufficient
 - Duration of campaign (e.g., month of October)
 - Any maximum or minimum contribution
- Best practice, but only “enforced” against charities, not co-venturer

The Amazon Effect



- **“How much of my purchase does Amazon donate?”**
 - The AmazonSmile Foundation will donate 0.5% of the purchase price from your eligible AmazonSmile purchases.
- Per smile.Amazon.com, all charities have received \$69,949,133.28 as of November 2017
- Per 990-PF from 2015, \$12,993,010 were qualifying distributions
- Amazon sales of product in 2015 were \$79.27 billion

Tax Considerations - UBIT

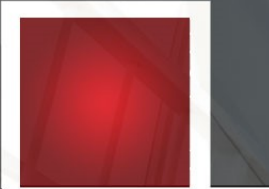
- Passive royalty exception
- Qualified Sponsorship rules?
- Acknowledgment vs. advertising
- Services by charity to co-venture partner
- Use of constituent mailing lists – active or passive?
- Endorsement issues – is clicking “like” an endorsement?

Variations on a Theme (not CCV)

- Flat donations, not contingent on purchase
- Donations made prior to consumer purchase
- Fishbowl at register
- Voting for donation allocations
- Click-to-give promotions, no purchase
- Experiential promotions
- Combination of sweepstakes, fundraising and crowd funding (prizeo; omaze)

New Trends

- Influencer marketing (f/k/a celebrity endorsement?)
- Online game environments
 - Overwatch players raise \$12.7 million for cancer
- Fundraising/technology platforms
- Virtual Reality – Facebook fail?
- Effects of Form 1023-EZ?



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