VLP LAW GROUP LLP

Doing Good and Doing Well: Cause Marketing Compliance

Brands and charities often work together on deals that raise funds for the charity (the “doing good” part) and increase sales for the brand (the “doing well” part). Such cause marketing deals can raise the profile of the brand as well as the charity. For the brand, these deals can result in a connection to a positive social or community effort, a better reputation with customers, and an improvement in associate morale. For the charity, in turn, these deals can result in additional funds and additional media exposure.

One common cause marketing technique involves a charitable sales promotion. In these arrangements, Brand A typically advertises that it will donate $X to Charity Y for each Product Z purchased by customers during a specific time period. Such campaigns, often conducted via social media, can be highly effective for both the brand and the charity. Even so, brand teams who engage in such efforts should be aware of the legal and compliance implications they raise.

Dozens of states regulate “commercial coventures,” which they generally define as arrangements in which a “commercial entity advertises in a sales or marketing campaign that the purchase or use of its goods or services will benefit a charity or a charitable purpose.” Usually, the Attorney General of the state enforces the state’s coventure rules through fines. Private rights of action, including class actions, are also authorized in some states.

Compliance with the state commercial coventure rules requires the brand to take a number of steps. For example, a number of states require specific disclosures to appear in all campaign advertisements. A few states (such as Alabama, California, Hawaii, Illinois, Massachusetts, Mississippi, and South Carolina) may require the brand to register the campaign with the state under certain circumstances. Some states (such as Alabama and Massachusetts) may require the brand to post a bond. States may also require the brand to have in place a written contract with the charity containing specific provisions, to maintain specific records related to the campaign, to file post-campaign financial reports, and/or to make such financial reports available to the state upon request.

Significant negative consequences can occur if regulators believe a campaign is not compliant. Many years ago, for example, the Attorney General of Georgia investigated a charitable sales promotion conducted by a well-known food company whose ads indicated that a donation would be made for each product purchase without also revealing that there was a maximum cap on the total donation amount. The investigation was resolved via a settlement agreement that required the company to make an additional donation to the charity equal to the amount that would have been made if no donation cap existed in the state. Similar negative consequences can occur if a class action challenge is filed. A few years ago, a pop singer settled a class action lawsuit alleging that advertising claims that “all proceeds” from sales of a particular item would go directly to charity were false. The plaintiff

asserted the “all proceeds” claim was false because sales taxes and shipping charges were not donated to charity. As part of the settlement of that case, the singer agreed to make an additional payment to charity.

Brand teams who plan to “do good and do well” by engaging in cause marketing campaigns should carefully consider how state commercial coventure rules apply to their promotions prior to launching such campaigns. Otherwise, the campaigns may result in unwanted regulatory or class action attention, both of which are unlikely to result in anything good for anyone involved.