

# ALERT

April 2020

## Charitable Sales Promotions During The Pandemic

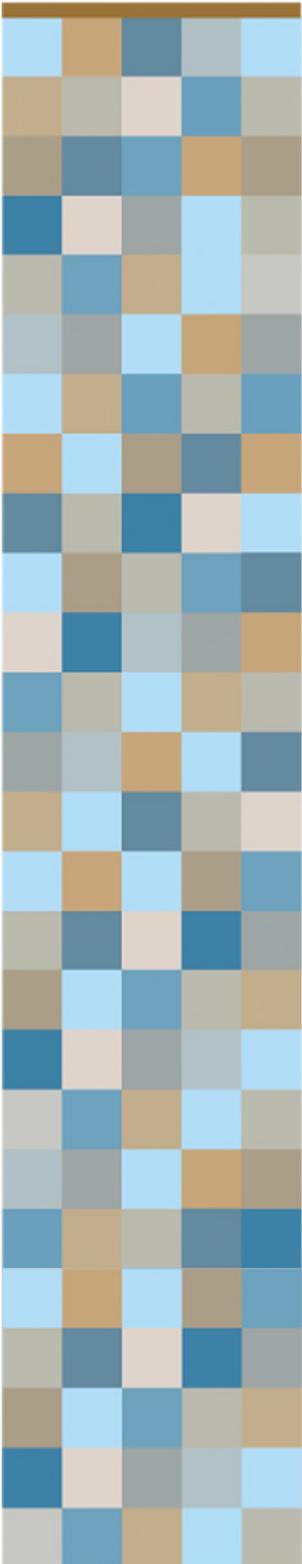
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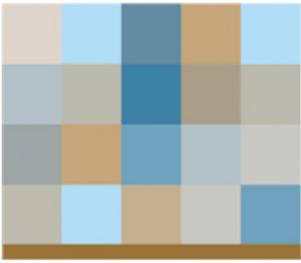
During times of national crisis, it is common for a surge in charitable solicitations and charitable giving. Retail brands and other for-profit businesses often want to do their part to help. The COVID-19 pandemic has sparked many brands to engage in coronavirus-related *cause marketing* promotions and *commercial co-venturer* (CCV) activities, whereby they advertise to consumers that purchases of their products or use of their services will benefit a charity or charitable purpose. These activities, however, are highly regulated to protect both consumers and charities from falling prey to those that may be acting with less than philanthropic intentions.

While the COVID-19 pandemic has resulted in modification or suspension of many regulatory requirements, to date the regulations that are applicable to charitable sales promotions and CCVs remain in place without any official exception, exemption or other type of relaxed requirements. While Massachusetts, for example, has indicated on its website that it may accommodate reasonable filing or registration delays that are the result of COVID-19-related business interruptions, it is important to keep in mind that regulators are likely to be extra vigilant in protecting consumers against marketing tactics that take advantage of a consumer's generosity or fear during the pandemic. To conduct a legally compliant charitable sales promotion as a commercial co-venturer, *be mindful of the following basic requirements*:

**Written Contract Requirements.** A written contract between the CCV and the charity is required by most states that regulate charitable sales promotions. Many states require the inclusion of specific contractual provisions, such as the charity's written consent to the commercial co-venturer's use of the charity name and trademarks prior to any use thereof in connection with the charitable campaign.

**Registration and Reporting.** Alabama, Hawaii, Illinois, Massachusetts, Mississippi and South Carolina all have some level of affirmative filing obligations imposed upon the commercial co-venturer, which must be filed ranging between 7 to 15 days prior to the start of the charitable campaign. While most of the states are now online filing, not all of them are fully online, although there could be exceptions made during the pandemic that would permit filing of certain forms by email. In Illinois, however, there is a filing fee requirement and they still require payment by check. We have been advised by a representative of their office that filing by email may be acceptable but that separate mailing of the filing fee check may cause delay in the CCV's registration as it will take





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*Terese Arenth is a Partner with the firm and serves as Chair of its Promotional Marketing and Advertising Practice Group, as well as Co-Chair of its Cybersecurity, Privacy and Technology Practice Group, both of which are within the firm's Intellectual Property Department. Ms. Arenth concentrates her practice in promotional marketing, advertising and Internet/new media, as well as privacy and technology related matters. She also has significant involvement in the firm's intellectual property practice area and vast experience in commercial and corporate litigation.*

time to process and connect the disjointed submission. That said, it is also our understanding that a late registration fee would not be imposed if the campaign started subsequent to proper filing but prior to the regulator's processing of that registration. Some of the forms require signatures by corporate officers and notarization, which could cause logistical problems during the pandemic in the midst of work-from-home orders. If original signatures are required and filing is permitted by email during the pandemic, a scan or copy of the original signatures (not electronic signatures like DocuSign) may be acceptable. Also keep in mind that Alabama and Massachusetts require posting of a bond, so if your company is not already licensed in those states as a commercial co-venturer, you will need to allot adequate time to secure those bonds. It is also important to note that charities have their own state registration requirements so be certain to ensure upfront that the charity subject of your campaign is registered and in good standing in these (and other) states, as they will not accept your CCV filing/registration if the subject charity is not registered.

**Transparent Disclosures.** State laws and industry best practices require certain disclosures when advertising a charitable sales promotion. At minimum, advertisers should disclose: the name of the commercial co-venturer and the charity benefitting from the campaign, as well as the charity's contact information and mission; the campaign start and end dates; the amount per purchase that will benefit the charity (which should be expressed as either a specific dollar or percentage amount); and that no portion of the purchase is tax deductible. When disclosing the amount per purchase, vague statements such as a portion of proceeds, net revenue or profit should be avoided as a consumer cannot calculate the donation amount and they fail to adequately inform the consumer as to the actual impact of their purchase. To the extent that there are any restrictions or other conditions or limitations on the charitable campaign and donation going to the charity – such as eligible products, product exclusions, geographic limitations, maximum donation amounts/caps or guaranteed minimum donations – those material terms must also be clearly and conspicuously disclosed.

If you have any questions regarding how to navigate the CCV regulatory requirements and how best to structure and promote a charitable sales campaign, please feel free to contact Terese Arenth at [tarenth@moritthock.com](mailto:tarenth@moritthock.com) or (516) 880-7235. We are here to assist you.



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