

2024 ANA/BAA MASTERS OF ADVERTISING LAW CAUSE MARKETING

Ed Chansky
Shareholder
chanskye@gtlaw.com
702-599-8016

A man in a white jersey is talking to a woman holding a baby. The woman is wearing a white t-shirt with the text "do good" and "well" visible. They are outdoors, possibly at a community event or charity fair, with trees and a blue banner in the background. The man is wearing a white jersey with a Nike logo and the number "10" on the back. The woman is wearing a white t-shirt with the text "do good" and "well" visible. The baby is wearing a blue t-shirt and is eating a piece of fruit. The scene is brightly lit, suggesting it is daytime.

Consumers today demand more positive action from brands.

Overview and Trends

- Increasing Attention to Purpose-Driven Business and Marketing in the post-COVID, #MeToo, BLM, BIPOC, DEI, Income Inequality, Global-Warming World . . .
- Also, generational changes in attitude among millennial (and younger) consumers who demand more from a company than profit maximization.
- How to Structure a company's approach?

Structural Options

- Create Your Own Foundation
 - **Pros** – Flexibility & control; possible role as clearinghouse for programs to benefit multiple other charities.
 - **Cons** – Costs, delay, state registration, IRS self-dealing rules & struggle to assure independent Foundation governance.



Structural Options, cont.

- Choose a charity to support
 - **Pros** – No cost, possible halo effect & name recognition if charity is well known to consumer.
 - **Cons** – Confirm registered status, possible high guaranteed minimum payments required, awkward regulatory, disclosure and other issues if want to support multiple charities.



Structural Options, cont.

- Donor Advised Fund
 - **What is it?** - Your own program with an existing third-party umbrella charity (e.g., GFM.org, CAFA, Pledgeling, Network for Good, SVCC, Hopewell, etc.).
 - **Pros** – Most of the benefits of your own foundation without the administrative costs or burdens.
 - **Cons** – Costs charged by DAF may be high, particularly if they require working with or through their own for-profit consulting arm; variance power over funds (though rarely exercised).



Structural Options, cont.

- B-Corp/LC3
 - **What is it?** For-profit business with a social mission in its charter.
 - **Pros** – Mostly PR to say that the company stands for more than just maximizing profits.
 - **Cons** – Potential confusion for public (and the company); it is not a charity; it still needs to follow all the rules for regular businesses when doing anything more than just bragging about employment, sustainable-sourcing, environmental, or other practices.



Structural Options, cont.

- Fundraising Platforms (GoFundMe, etc.)
 - **Pros** – Simplicity
 - **Cons** – Not directly tied to your marketing; more of a PR gesture to try to raise money for a charity or a cause.



Structural Options, cont.

- Direct Giving
 - **Pros** – Complete control; no other entities needed
 - **Cons** – When money doesn't flow to/through a charity, tax issues can arise for the giver as well as the recipient; less ability to engage consumers to give.



Two Trends to Note

- **Charity Sweepstakes (not “Raffle”)** – More and more companies are trying to run these types of programs. Issues:
 - Costly and cumbersome registration as professional fundraiser in 40+ states if you are establishing an ongoing site/platform and making money.
 - Need intermediary charity to receive all funds first to avoid crushing paperwork burden and other complications of working directly with multiple end-beneficiary charities.
 - California is taking aggressive positions on adequacy of AMOE, demanding it be available online, that it match the highest amount allowed in a single donation, be disclosed with equal prominence to other entry methods, etc. to avoid being deemed an unauthorized “raffle.”

Charitable Sweepstakes

- As a one-time activity, a company might consider such a program with the following precautions (and with eyes wide open on possible application of some CCV, “trustee” or other laws in some states):
 - Consumers are invited to make a voluntary donation (like donation at checkout) with automatic entry as a thank-you. No “sale” of tickets. No “raffle.”
 - 100% of donations go to charity. No compensation to company at all.
 - AMOE provides full & equal chance to enter (California charity regulators are looking hard at AMOE in this context).
 - Have contract with charity, confirm charity is registered in all 39 states for fundraising, and make all required solicitation disclosures.
 - However, California Gov. Code §12599.9 could cover the program as creating an **“online charitable fundraising platform.”**

- California AB 488; Gov. Code § 12599.9
 - Enacted October 7, 2021. Implementing regulations and registration duties took effect in 2024. Main targets are online fundraising platforms, but broad wording captures more. For example:
 - CCV – If online, register if benefiting more than six charities in any one year.
 - Donation at Checkout – If online, register as a charitable fundraising platform, even if you receive no compensation.
 - Free-action programs conducted online also trigger registration, as could other types of activity.
 - We will pay special attention to the potential implications of the new law, and the draft regulations, as we look at several types of programs in the rest of this presentation.

Agenda

- Charitable Sales Promotion/Commercial Co-venturer
- Free Action Program
- Donation at Checkout
- Voting Programs
- Impact of California's new law on each type of program
- International Programs (Time Permitting)

\$1.00 TO MDA[®]

For every box of *Kellogg's* Rice Krispies[®] purchased through Sept. 1!

Help Jerry's Kids Just Be Kids!

Save 50¢

"Put Snap! Crackle! Pop!" into your morning!

MANUFACTURER COUPON EXPIRES NOVEMBER 30, 1999

CONSUMER: This good on all sizes 20077. Void where prohibited. LIMITED TO ONE COUPON PER PACKAGE PURCHASE. © 1999 KELLOGG COMPANY. RETAILER: KELLOGG SALES COMPANY will redeem this coupon in accordance with our redemption policy. Retailer reserves all rights. Good value: 50¢. Not redeemable. Void, or restricted to one per coupon in KELLOGG'S ONE STOP STORE. ONE FAMILY STORE, ONE TR STORE. © Kellogg Company, C. 1999, Kellogg Company

Commercial Co-Venturer

- A person engaged in commerce
- other than raising funds for charities
- who conducts a “charitable sales promotion.”
- Exceptions in a few places (MA, IL)

Charitable Sales Promotion

- Advertising or sales campaign
 - representing that the purchase or use of goods or services
 - offered by the co-venturer
 - will benefit a charity or charitable purpose.

CCV Requirements

- Approx. 20 states have CCV laws
- Written contract with particular provisions
- Register/bond
- Disclose per-unit donation amount in ads
- Key Disclosure issues
 - Caps/Minimums
 - Flat Donations
 - Fuzzy Disclosures
 - Unexplained mention of charity

Disclosure Golden Rule



DO NOT MISLEAD THE CONSUMER AS TO THE EFFECT A PURCHASE (OR OTHER ACTION) WILL HAVE ON ANY CHARITABLE DONATION

See New York AG's "Best Practices" Guidelines

http://www.charitiesnys.com/cause_marketing.jsp#best

- Cal. Gov. Code § 12599.9(a)(1)(D) requires registration as a “charitable fundraising platform” if a company otherwise qualifying as a CCV (and exempt from registration under existing CCV law for instore programs) conducts programs to benefit more than six end-beneficiary charities in any calendar year.
- 11 Cal. ADC §314(p) categorizes the above activity as “Type D” solicitation (or “Type C” if the consumer can choose the beneficiary charity).

Free Action Program



Dell

Yesterday at 8:39am · 🌐




Turn your good intentions into positive impact. Watch below to show you care, and Dell will give 25¢ to Waterkeeper Alliance—at no cost to you! Up to a total amount of \$50,000. One give per ad/person/device.



Clean Water, Clear Conscience

Dell is helping Waterkeeper Alliance protect drinkable, fishable, swimmable water worldwide.

[GIVEWITH.COM](https://www.givewith.com)



This Ad Supports Clean Oceans

For every click, Dell will give to help **Waterkeeper Alliance** reduce plastic in our oceans.

You Click. We'll Give.* →

*Each click provides 25c up to a total of \$50,000. One give per ad/person/device.

POWERED BY GIVEWITH © 2017 Givewith LLC




You Click. We'll Give.* →

*Each click provides 25c up to a total of \$50,000. One give per ad/person/device.

POWERED BY GIVEWITH © 2017 Givewith LLC



Together, we can remove plastic from coastal and marine waterways, and keep more from ever entering our oceans.

You Click. We'll Give.* →

*Each click provides 25c up to a total of \$50,000. One give per ad/person/device.

POWERED BY GIVEWITH © 2017 Givewith LLC



This Ad Supports Clean Oceans

For every click, we'll be supporting bold action to protect our oceans.



You Click. We'll Give.* →

*Each click provides 25c up to a total of \$50,000. One give per ad/person/device.

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*Each click provides 25c up to a total of \$50,000.
One give per ad/person/device.

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Free Action Program

- Same as charitable sales promotion, but nothing is being sold
- Examples: Tweet a message, “like” a page, complete a survey, etc.
- Regulation? Trustee? CCV? Something else?
- Disclosure?
- New York Attorney General Guidelines?

Free Action Program - California

- Cal. Gov. Code §§ 12599.9(a)(1)(C)&(D) require registration where a site invites/allows users to trigger a donation “based on purchase **or other activity performed by**” users.
- 11 Cal. ADC §§ 314(o) & (p) expressly mention “free action programs” (without definition) as activity within the statutory definition.
- No “safe harbor” for doing programs for six or fewer charities in a calendar year, which oddly treats free-action programs more strictly than purchase-based CCV programs. Time will tell how enforcement develops.



Did you know...
in the U.S. over
13 million children
and over 5 million
older Americans live
in poverty?
Source—feedingamerica.org

Checkout Hunger

Donate \$2, \$3, \$5 or
any amount at the register
October 18 - November 28

100% of your
donation supports our
local food bank.

Your donation will be added to the
amount of your purchase. Save your
register tapes for your records.

 **foodlink**
abundance shared

Sponsored by
Wegmans

Helping create healthier, better neighborhoods

Please
Wait
Here

- General Guidelines
 - Don't deduct a fee from donation amount or take any other form of compensation from the charity.
 - Confirm that the Charity is registered in every state
 - Include appropriate solicitation disclosures (see written materials for details)
 - Potential issues under non-standard CCV and/or “trust” laws?
 - The above approach has been used for years by many companies with little or no challenge as the generally applicable law to avoid has been “professional fundraiser.”

Donation at Checkout, cont.

- Cal. Gov. Code § 12599.9 changes things for online programs.
 - 12599.9(a)(1)(A) requires registration as an “online charitable fundraising platform” for any site that invites/allows users to donate to one or more named charities.
 - 11 Cal. ADC §314(m) categorizes the above activity as “Type A” solicitation.
 - No “safe harbor” for doing programs for six or fewer charities in a calendar year.
 - How about instore? Cal. AG staff members have hinted they may consider Cal. Gov. Code § 12582(b) to apply and require registration as a “trustee.” Time will tell if enforcement of this concept arises.



HOW IT WORKS

We're looking for people, businesses, and non-profits with ideas that will have a positive impact. Look around your community and think about how you want to change it.

anyone can submit their idea

– & –

vote for their favorites



Pepsi is accepting 1000 ideas every month.
Tell us your great idea. Need help?
[Download the toolkit to learn more.](#)

[START YOUR APPLICATION](#)



Starting February 1st, vote for up to 10 of your favorite ideas every day. If you submitted an idea, feel free to vote for your own.

[BROWSE IDEAS](#)

Welcome!

[Sign In](#) | [Join Refresh Everything](#)

10

young to spend.
Pick your favorites now.

[Start Your Application](#)

Voting Programs

- Typically, sponsor posts a group of charities to which the sponsor has committed a total of \$XXXXXX.
- Consumers are invited to vote how to allocate the total.
- No cost to consumers, and their actions don't unlock any money; votes just help determine allocation.
- Historically viewed as outside “fundraiser” and CCV laws.

Changes Under California Law?

- Cal. Gov. Code § 12599.9(a)(1)(C) can apply where a site invites/allows users to “select one or more recipient charitable organizations to receive donations made by [the] platform or other third party based on purchases ***or other activity***” by users.
- 11 Cal. ADC §314(o) categorizes the above activity as “Type C” solicitation.
- Since the consumer action doesn’t unlock/trigger money that wouldn’t otherwise be donated, it is questionable whether this activity actually constitutes “fundraising.” Time will tell how enforcement develops.

Duties in California

Registration

- Register with state
- File annual renewal
- File annual report on all activity with complex information requirements (Form PL-4).

Verify Good Standing

- Any beneficiary charity **must be in good standing**.
- For a platform charity, that includes being registered in California for general fundraising purposes.
- For a recipient charitable organization, it means only (a) being on the IRS list of 501(c)(3) exempt organizations, and (b) not being on the California “may not operate” list.
- Check the “may not operate” list online on the 1st and 3rd Wednesday of each month, both prior to posting a charity, and before sending donations to the charity.

Separate Account for Donations

- Maintain separate account for donated funds.
- Can be one account for all such funds.
- Or, create direct accounts for the recipient charitable organizations to receive their net donated funds directly & immediately when the donation is made without ever touching the platform operator's hands.

Disclosures (as applicable)

- Donations are to an intermediary “Platform Charity” if not directly to a recipient charitable organization.
- Maximum time for donation to be sent to the recipient charitable organization (details can be via link).
- Any fees deducted from the donation, excluding credit card processing fees.
- A statement as to the tax deductibility of the donation.
- Option for donor to provide their contact information to the recipient charitable organization (Type A, but N/A if charity didn’t consent to appear on the platform).
- If donor can designate a purpose for the funds, state that no such restriction is binding unless the recipient charitable organization has agreed in advance.
- The fact that the end-recipient charity may not receive the donation, with an explanation of the most pertinent reasons this might happen (loss of tax-exempt status, etc., or whatever other circumstances may apply). The explanation can be via a link.

Consent from Charity

Normally, need consent & agreement to cover the following (as applicable):

- Total fees, if any, to be deducted from donations
- Time period for funds to be sent to charity
- Ability for charity to review and approve content about the charity.
- Charity's right to contact donors who choose to share their information with the charity (Type A)
- Ability for charity specify if it dis/agrees with the ability of the campaign organizer to specify particular purpose for which donated funds will be used
- Permission for the platform to send donation receipts

Consent from Charity

Exception to consent:

- Not needed if platform displays only very limited information about the charity, including
 - Name, EIN, Phone, URL
 - Cal. state reg. number
 - Basic mission info from IRS and/or charity's state filings in California
 - Statement that charity has not consented to the fundraising, or reviewed or approved the campaign.
- Must allow charities to opt-out from being listed on platform.

Post Donation

- Send donation receipt within 5 business days (Type A&B)
- Send money to charity
 - 5 business days after receipt for Type E
 - 30 days after end of month when received for Type A&B (charity consent)
 - 45 days after end of month when received for Type A&B (no charity consent)
 - 30 days after end of each quarter (Type C&D)
- Include detailed accounting with each payment. See Reg. § 321
- Post results of campaign, along with when money has been sent to the recipient charitable organization, 15 days after each payment.
- For redirection events, ask donors for recommended alternate charities (Type A&B). Could be very burdensome!

Note on Hawaii

- On July 5, 2024, Senate Bill 2983 (“SB 2983”) became law due to signature by the governor and is now known as Act 205. The effective date is January 1, 2026.
- While similar to the California law in many respects (registration with the state, disclosures on websites, recordkeeping, annual reports to the state, etc.), SB 2983 goes much further in other respects. Some key differences to note:
- Rather than creating special regulatory rules for platforms (as in California), Hawaii imports most of the same requirements as for professional fundraisers, including but not limited to:
 - Having written consent from every charity for whose benefit funds are raised, even for peer-to-peer fundraising the platform doesn’t directly conduct itself, and where such funds flow through a platform charity.
 - Filing each contract (with 2 charity signatures) at least 10 days prior to soliciting or providing services for the charity.
 - Allowing a charity to void the contract within 10 days after signing, or at any time if the platform operator isn’t registered with the state.
- A platform charity (i.e., a charity receiving all online donations before regrating the funds to end-beneficiary charities) and the platform are equally liable for any misuse of funds by the other, even if there is no other relationship or control between them.
- No current provision exists to avoid potential double filing duties for platforms already covered by other laws, such as CCV, though this issue presumably will get addressed before the law takes effect on January 1, 2026.

International

SU2C VIDEO



MasterCard and Stand Up in Russia ThankYouCampaign



International

- Charity Registration. Some countries may require a charity to be registered in the country before any fundraising can be conducted on its behalf.
- Charity Spending. Some countries may require any money raised for a charity in that country to remain and be spent by the charity in that country.
- Fundraiser Registration. Some countries might deem the CCV company to be a form of fundraiser with a registration requirement.

International, cont.

- Tax Issues – Donations. Any amount you treat as a “donation,” might not qualify for deductions or other beneficial treatment in a given country if paid outside the country.
- Tax Issues – Intra-company. If sponsor pays money from an entity in one country to a related entity in another country before disbursing to the charity, there might be tax issues.
- Consumer Perception. Consumers in any given country might not respond well to an offer benefiting a foreign charity.

QUESTIONS?