

# What To Consider When Launching a Cause Marketing Campaign

## The Bottom Line

- Cause marketing campaigns are an excellent way to leverage a brand's marketing infrastructure to make a difference in the world, especially when the campaigns benefit a cause as closely followed as the humanitarian crisis in Ukraine.
- By following all appropriate laws and best practices, brands and marketers can ensure that they are making the biggest possible impact without having legal or PR issues distract from the important work they are doing.

The war in Ukraine has led to Europe's worst refugee crisis since World War II; more than 3 1/2 million civilians have already been displaced, and some observers expect the number to reach five million as the war continues to unfold. There has been an outpouring of concerned citizens the world over who are hoping to help provide assistance, and a number of brands have launched "cause marketing" campaigns aimed at expressing support for the Ukrainian cause and providing financial assistance to those who are displaced.

This is a great opportunity for brands to support an important cause, but marketers should ensure that they understand their legal obligations and risks when it comes to cause marketing campaigns.

**First**, brands should verify that their money is going to the right place. Unfortunately, charitable contribution scams have become commonplace in recent years, with bad actors purporting to represent charitable causes raking in millions of dollars from unsuspecting donors. For example, between 2019 and 2020, both the New York and California attorneys general sent cease and desist letters to the Black Lives Matter Foundation, which had no involvement with the Black Lives Matter movement, yet was soliciting millions of dollars in donations. To ensure that donations are going to legitimate charities, brands should seek to work with charities that are registered as 501(c)(3) charitable organizations with

the federal government and have submitted required state-level filings to solicit charitable contributions. Brands should also consult information published by the IRS and the Better Business Bureau, as well as websites like Charity Navigator, to ensure that the charity isn't suspicious in any way.

**Second**, state laws impose a number of obligations on brands themselves regarding their charitable solicitation campaigns. A number of states have laws governing "commercial coventurers," or for-profit companies who represent that the sale of goods or services will benefit a charitable cause. These laws include specific requirements regarding the contract between the brand and charity, and also include disclosure requirements for associated advertising. In addition, six states – Alabama, Hawaii, Illinois, Massachusetts, Mississippi and South Carolina – require the brand to register with the state and/or obtain a bond. While not complicated, these registrations can be time-intensive, and require at least a month of lead time to ensure that they are filed by the appropriate deadlines.

**Third**, marketing materials must describe the nature of the charitable program accurately and in detail. Among other things, brands should always disclose the amount of the donation, the identity of the charity, whether it will make a flat donation or base the donation on product sales, and any limitations on the offer. These disclosures must always be clear and conspicuous.

Brands have gotten into hot water in the past for failing to appropriately disclose key limitations. For example, a 1999 General Mills charitable sales promotion benefitting the Breast Cancer Research Foundation prompted an investigation by the Georgia attorney general. The promotion involved General Mills' promise to donate 50 cents to the Breast Cancer Research Foundation for each Yoplait lid that was returned, up to \$100,000. However, the \$100,000 limitation was only disclosed on the inside of the lid, which was only visible to consumers after opening the product. Consumers actually returned 9.4 million lids – which would have meant a donation of \$4.7 million – a much more significant number than the \$100,000 cap. General Mills averted legal action by agreeing to donate an additional \$63,000 to the Breast Cancer Research Foundation.

More recently, the National Advertising Division (the NAD) launched inquiries into advertising by Niantic (the maker of Pokemon Go) and DoorDash that the organizations would be making significant donations to organizations like Black Lives Matter and the Black Developers Initiative. The NAD found that the companies had made all donations as promised, and therefore declined to take any action, but this example illustrates the fact that charitable marketing campaigns are being scrutinized, even when executed correctly.

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## For More Information

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