Good Deeds May Be Punished

Jeanne Seewald explains what business owners need to know about cause-related marketing.

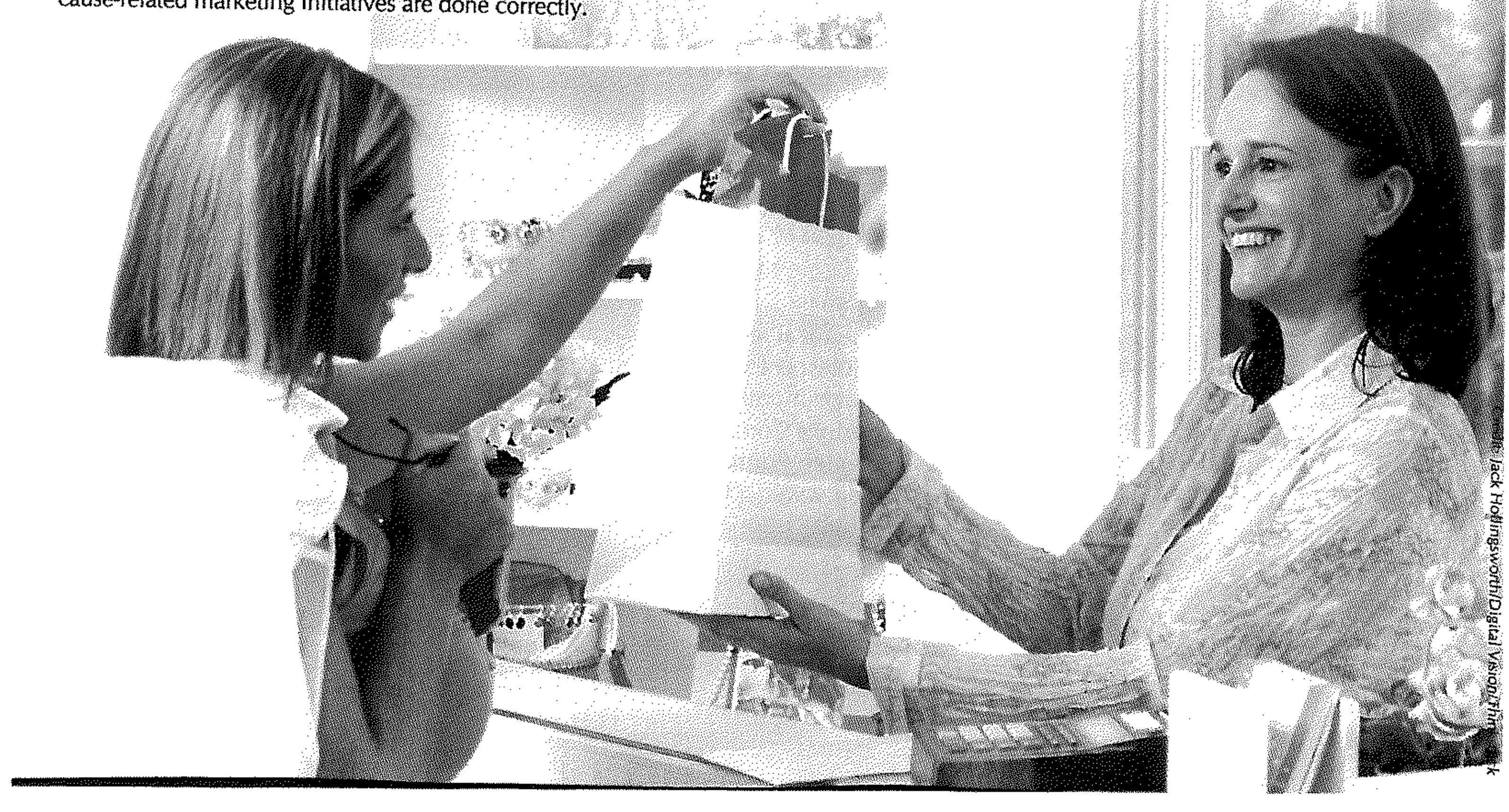
We all admire responsible corporate citizens and like to see companies doing good in the community. But in the case of caused-related marketing, doing good may not be good enough. If a company is not familiar with the pitfalls, its good deeds could be punished by the law.

There has been a tremendous growth in marketing campaigns that appeal to our charitable nature such as: "Buy our product and a portion of the proceeds will go to charity." These campaigns are known as "cause-related marketing" and aim to connect a product to a social or charitable cause and thereby increase sales. An example is the partnership of the Yoplait campaign "Save Lids to Save Lives" in support of the Susan G. Komen for the Cure. Yoplait packages specific products with pink lids that consumers turn in and Yoplait donates 10 cents for each lid. Cause-related marketing involves cooperative efforts of a "for-profit" business and a charitable or "non-profit" business for mutual benefit. This type of marketing differs from corporate giving, which generally involves a specific donation that is tax-deductible. Companies and brands want to be perceived as good corporate citizens and cause-related marketing accomplishes that purpose. Studies show that sizable numbers of consumers may change their purchasing decisions if a product or service is associated with a cause they care about. The ability to affect consumer purchasing decisions explains the increase of cause-related marketing efforts in the last few years.

Clearly, the benefit to the for-profit business is increased sales and positive public relations. The benefit to the non-profit is increased ability to promote the non-profit's cause via the customer base of the for-profit business. However, there are legal pitfalls. For instance, Lady Gaga was sued over her sale of $5 wristbands that say "We Pray for Japan." She was accused of violating consumer protection laws and engaging in unfair and deceptive advertising by stating that "all proceeds go to the Japan Tsunami Relief" when, according to the charges, the claim did not take into account taxes and shipping fees on the wristbands. Cause-related marketing may trigger state commercial co-venturer laws, professional fundraiser laws and federal and state laws governing false, misleading or deceptive advertising.

Commercial co-venturer laws attempt to protect consumers and charities against fraudulent advertising and assure that donations are made to the intended charity. In general, commercial co-venturer laws apply in the state where the offer is made to the public, thus, nationwide campaigns are required to comply with the laws in all 50 states. Professional

Business owners should exercise care to ensure their cause-related marketing initiatives are done correctly.



Credit: Jack Hollingsworth/Digital Vision/Thin fundraiser laws apply to persons who, for compensation or other consideration, manage or assist with a charitable solicitation. If found to be a professional fundraiser, many state laws require campaigns to be registered, disclosed and bonded. Almost all states have laws regulating false, misleading or deceptive advertising. Florida law on these issues is quite detailed and is contained in the Solicitation of Contributions Act. (Fla. Stat. §496.401 *et seq*).

When dealing with cause-related marketing, the following common problems may generate legal issues:

(1) Flat donation. The advertiser tells consumers that each purchase results in a donation, but the company only gives a fixed amount to the charity. This misleads the consumer as to the effect a single purchase will have on the donation. A way to avoid this problem when providing a flat donation is to simply advertise that the company is a proud sponsor of the charity and disclose the amount of the donation. This method generally avoids the need to comply with commercial co-venturer laws.

(2) Caps and minimums. The per-unit donation is disclosed in advertising, but the total donation is subject to a cap (such as up to $10,000) or a minimum (such as a donation will not be made unless at least $10,000 of sales are made). Either of these situations may result in misleading the consumer. These problems may be avoided with full disclosure about caps and minimums.

(3) Vague disclosure. Advertisers should avoid providing vague information about the amount to be donated such as "a portion of the purchase price," "a portion of proceeds" or "10 percent of net profits." Companies may resort to this type of vague language due to the difficulty in calculating in advance the actual amount to be donated. Disclosure of the donation in terms that the consumer can easily understand or calculate is the best course to comply with the law. The purchaser's decision may be influenced by whether $1 or 1/10,000 of a penny is being donated for each purchase. The best course is to base the percentage on the retail purchase price instead of proceeds or profits. This establishes a basis for consumer expectations.

(4) Tax issues. Non-profits must be careful when agreeing to actively promote the sale of the advertised product or service or it may be engaging in an activity that could jeopardize its tax-exempt status or cause it to incur unrelated business taxable income. Instead of actively promoting the product or service, non-profits should consider mere public acknowledgement of a sponsor's support. If the non-profit wants to actively promote the product or service, it should confer with its tax advisers to assure that it is not endangering its tax-exempt status.

Historically, enforcement of the commercial co-venturer laws has not been seriously pursued by some states; however, this area of marketing is growing and drawing regulatory attention. In order to avoid the legal risks of cause-related marketing, companies should consider taking the following steps at a minimum:

- Sign a written contract with the non-profit so there is a clear understanding of each party's responsibility and limitations. Florida law requires that a commercial co-venturer obtain the written consent of the non-profit before using its name in a promotion and also requires that a final accounting be provided to the non-profit by the for-profit business following completion of the campaign.
- Provide clear disclosure to avoid misleading consumers as to the affect their purchase will have on any charitable donation, comply with state disclosure laws and register the campaign in required jurisdictions.
- Confirm that the charity is registered for general fundraising purposes in all states where the product or service will be offered for sale.
- Consider the tax implications for the non-profit.

Good deeds should be rewarded, not punished. By being aware of the above issues and structuring your cause-related marketing campaign appropriately, you can avoid legal problems and benefit both the for-profit business and the non-profit entity.

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