

PATTISHALL

insights

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CAUSE MARKETING: Doing Good, Doing Well, And Doing It Right

By Jessica A. Ekhoﬀ



If you've ever collected box tops to support your child's school, paid \$5 to ditch your suit for jeans on Lee National Denim Day, or perused the collection of (RED) clothing at Gap, then you've experienced cause marketing in action. Cause marketing is the idea of a business joining forces with a charitable organization in the name of a good cause. A well-executed cause marketing campaign can lead to a reputational (and, hopefully, financial) boost for the business and an injection of cash for the charity.

Cause marketing can take many forms. Examples include social media campaigns that invite users to vote for the charity they want to win a donation, or asking customers to make a contribution at check-out. But the most popular type of campaign involves a business donating money to a charity for each qualified purchase made by a consumer. These types of campaigns are on the rise as consumers – especially millennials – increasingly make purchase decisions with an eye toward social consciousness.¹ A 2014 Nielson survey found that 55 percent of consumers are willing to pay extra for products and services from companies they perceive as being committed to social and environmental issues.²

Boosting a company's revenue and reputation while supporting a good cause may seem like a no-brainer, but it's important to know the rules before diving into the world of cause marketing. The makers of Yoplait found this out the hard way. Yoplait teamed up with the Breast Cancer Research Foundation on a promotion promising consumers that it would make a donation for each yogurt purchased. Yoplait set a \$100,000 donation cap on the promotion, but consumers had no way to know about the cap until they bought the yogurt, opened it, and read the full disclosure on the underside of the lid. The Georgia Attorney General called foul, and Yoplait's parent company was required to make a donation for each qualifying yogurt sold in the state. The cost of the extra donation likely paled in comparison to the bad publicity caused by the mistake.

Another example of an unfortunate cause marketing error was Tylenol's promotion of a painkiller co-branded with the Arthritis Foundation. Among other issues, Tylenol pledged to

“ A WELL-EXECUTED CAUSE MARKETING CAMPAIGN CAN LEAD TO A REPUTATIONAL (AND, HOPEFULLY, FINANCIAL) BOOST FOR THE BUSINESS AND AN INJECTION OF CASH FOR THE CHARITY. ”

1. <https://www.uschamberfoundation.org/reports/millennial-generation-research-review>

2. <http://www.nielson.com/content/dam/nielsen/global/apac/docs/reports/2014/Nielson-Global-Corporate-Social-Responsibility-Report-June-2014.pdf>

“ [C]OMPANIES INTERESTED IN CAUSE MARKETING SHOULD BE MINDFUL OF THE LAWS AND GUIDELINES THAT APPLY TO THESE PROMOTIONS. ”

donate \$1 million to the Foundation regardless of how many products were purchased -- a fact not revealed to consumers. This lack of transparency led to a lawsuit by the Attorneys General in 16 states and the District of Columbia, and a seven figure settlement.

To avoid similar problems, companies interested in cause marketing should be mindful of the laws and guidelines that apply to these promotions.

State Commercial Co-Venturer Laws

Many states regulate “commercial co-venturers” (CCVs), i.e., companies whose main business is something other than fundraising for charities. In these states, a for-profit company teaming up with a charity on a cause marketing campaign will generally be considered a CCV. Rules for CCVs vary by state, and can include the following requirements:

- Many states require a written contract between the CCV and the charity, and a few states require that the contract be filed with the government. Commonly-mandated contractual provisions include:

A description of the goods or services covered by the promotion;

The time period and geographic area in which the promotion will run;

An estimate of the total donation that will be made to the charity, and a date by which the donation will be made; and

An explanation of how the charity’s name or logo will be used in the promotion.

- Many states require that certain disclosures be made on in-store signage or other advertisements run in connection with the promotion. These disclosures often include the donation that will be made for each qualifying purchase (usually as a percentage of the purchase price or flat dollar amount), and the name and contact information of the charity.
- Some states require CCVs to maintain financial records for the promotion for up to three years.
- A few states require the CCV to register and/or pay a bond before engaging in cause marketing.

False Advertising and Deceptive Business Practices Laws

Even in areas that don’t regulate CCVs, it’s important to structure cause marketing campaigns to avoid running afoul of state and federal false advertising and deceptive business practices laws. The key is to make sure consumers understand the impact their purchase will have on the donation. For example, it’s best to avoid language such as “A portion of the proceeds will support XYZ charity,” since this gives consumers no way of knowing whether their purchase will result in the donation of a dollar or a tenth of a cent. Likewise, it’s best to avoid caps and guaranteed minimums. If a cap is reached before the end of the promotional period, some consumers will make purchases that do not actually contribute to the overall donation. On the flipside, if a guaranteed minimum donation will be made regardless of sales, then individual purchases may not have an impact.

Better Business Bureau Standard 19

Although it’s non-binding, Better Business Bureau Standard 19 provides useful guidance for companies seeking to create a cause marketing campaign. The suggestions are similar to those included in many states’ CCV laws, such as that companies disclose the per-purchase donation, the duration of the promotion, and any maximum or minimum donation that will be made. ■

AWARDS



2016 Award of Merit Recipients (from left to right): Sara Ulfsdotter (Stockholm, Sweden); Robert W. Sacoff (Chicago, Illinois, United States); and Luis Do Amaral (Rio de Janeiro, Brazil).

■ **Robert W. Sacoff**

AIPPI presented Bob with its Award of Merit at its 2016 World IP Congress in Milan, Italy. The Award recognizes Bob’s outstanding contributions to AIPPI’s work to develop and improve intellectual property laws around the world. AIPPI, the Association Internationale pour la Protection de la Propriété Intellectuelle, was founded in 1897. It is a politically neutral professional association based in Zurich, Switzerland, with over 9,000 members in more than 100 countries. Bob is the seventh American lawyer to receive the Award since it was created in 1997.

APPOINTMENTS

■ **Robert W. Sacoff and Seth I. Appel**

Bob chaired, and Seth served on, the 2016 INTA Project Team to award the Pattishall Medal for Teaching Excellence, which is discussed further on the back page.

PUBLICATIONS



■ **Seth I. Appel**

Seth’s article, “Reasonableness of a Party’s Claim or Defense is Significant – But Not Necessarily Controlling – in Determining Fee Awards Under U.S. Copyright Act,” was published in the September edition of *AIPPI e-News*.

■ **Jonathan S. Jennings**



Last month, the American Bar Association published the chapter Jonathan authored entitled “Domain Names and Trademarks On the Internet” in the second edition of the book *The Intellectual Property Handbook: A Practical Guide for Franchise, Business and IP Counsel*. Also last month, the Pharmaceutical Trade Marks Group’s newsletter, *Law, Lore & Practice*, published Jonathan’s article on the TTAB decision *Mini Melts, Inc. v. Reckitt Benckiser LLC*, relating to a dispute between marks in the ice cream and OTC pharmaceutical fields.

PRESENTATIONS

■ **Janet A. Marvel**

Janet will speak on “Understanding the Intellectual Property License 2016: Trademark Licensing” at the Practising Law Institute in Chicago on November 10.

2016 Pattishall Medal for Teaching Excellence

The Pattishall McAuliffe firm, in cooperation with the International Trademark Association (INTA), periodically awards the Pattishall Medal for Teaching Excellence to an educator in the trademark and trade identity field. The award honors the late Beverly Pattishall, a pioneer in teaching trademark law and a leading trial lawyer of his time. This year, the 2016 Pattishall Medal Project Team reviewed 31 excellent nominees from the U.S. and other countries, and selected the recipient, Prof. Dr. Annette Kur, of the Max Planck Institute for Innovation and Competition, in Munich. Dr. Kur's bio is at <http://www.ip.mpg.de/en/persons/prof-dr-dr-hc-annette-kur.html>.

Best Lawyers Business Edition

The Summer 2016 edition recognized the Pattishall McAuliffe firm for Intellectual Property Law.

The Best Lawyers in America®

David C. Hilliard and Robert M. Newbury have been recognized in the fields of Litigation – Intellectual Property, and Trademark Law for 2017.

World Intellectual Property Review (WIPR)

David C. Hilliard, Jonathan S. Jennings and Phillip Barengolts have been named as WIPR Leaders in Illinois for 2017.