



NONPROFIT ADVISOR

For DAV Departments and Chapters

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BUY THESE COOKIES AND HELP A VET:
THE IN'S AND OUT'S OF CAUSE MARKETING

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“If you buy this product, you’ll be saving a kid’s life. Stock up today!” It is barely possible to get through a day without being assaulted by some promotion that is a variant of that just quoted. This approach to sales is known broadly as “cause marketing.” For purposes of this newsletter, “cause marketing” can be defined as an effort to sell a commercial product or service by stating or implying that the purchase will benefit a charity. Cause marketing, in its current form, seems to have begun with an American Express campaign in the 1970’s, although charity/non-charity partnerships flourished as early as the late 1930’s and, for example, resulted in the establishment of the March of Dimes.

While cause marketing sounds like a pain-free way for charities to get otherwise unavailable income, there are landmines associated with it as a fundraising methodology. This issue of our newsletter is intended to alert departments and chapters to some of the major issues on the cause marketing landscape.

HOW TO RECOGNIZE A CAUSE MARKETING DEAL

Cause marketing can appear in many variable forms, but always involves the following elements:

- A for-profit company
- Using the name of a charity
- In the marketing of a product or service
- And stating/implying that the charity will benefit from the sale

Before a DAV department or chapter could even *consider* such an arrangement, several issues would need to be addressed.

TRADEMARK ISSUES

A cause marketing arrangement involves the grant of the right to use a trademarked name (like “Disabled American Veterans”) to a third party. This requires a trademark license agreement which must be reviewed by a lawyer. In addition, DAV’s Bylaws and NEC regulations not only prescribe certain approvals for fundraising projects, but require that any transfer of the right to use DAV’s trademarked name be approved by the appropriate state department and by the NEC. See National Bylaws, Section 15.3, Paragraph 13.

ASSOCIATION ISSUES

A cause marketing arrangement is a very public partnership. DAV departments and chapters must be alert to ensure that any potential partners are not so controversial, or so tainted, that DAV’s reputation will be harmed by such an association. (Remember the old adage, “You can judge someone by the company he keeps”). Sad to say, some companies only get the charitable spirit when it is necessary to polish the corporate image because of publicity about some scandal, labor violation or defective product. For this reason, the National Bylaws (Section 17.3, to be exact) provide that the written approval of the National Adjutant is needed before any subordinate unit can “associate” with a non-DAV entity in any way. Note



that this approval is in addition to any other authorizations that may be required from the state department or the NEC.

MONEY ISSUES

In a cause marketing deal, a business buys the use of a charity's name. It is therefore necessary to determine a fair price. Too often, a charity gets the short end of this stick and winds up licensing its name for pennies. The NEC regulations (Regulation 2(a)(2)) set a benchmark price: 50% of the amount received by the business for the promotion using DAV's name. While that number is not set in stone, and depends upon the facts of an individual deal, the regulation does reflect the very legitimate concern that in many cause marketing arrangements, the charity winds up being shortchanged.

TAX ISSUES

In an ideal cause marketing relationship, the charity signs a contract and sits back and waits for the money to roll in (or flutter in, as dollar bills are better than pennies!). Many times, unfortunately, the deal requires the charity to work hard in marketing the product in question by providing free labor, free advertising or some other form of exposure for the business entity. To give a real-life example: the DAV National Organization was once offered (and refused) the opportunity to receive a (small) percentage of the gate at a major sporting event in exchange for the use of its name **AND** dozens of DAV-supplied volunteer ushers for which the promoters would otherwise have paid handsomely! The Internal Revenue Service has made it very clear that when a charity takes an active

role in marketing a product, any income that the charity receives from that promotion becomes taxable at regular corporate rates.

REGULATORY ISSUES

Between one-half and one-third of the states have specific regulations governing cause marketing arrangements. While each department and chapter would need to seek legal counsel about the requirements of a specific state, the most common kinds of regulations involve the following:

- Notice to state regulators PRIOR to the inception of a promotion
- Detailed contract between the charity and the marketer containing specific terms and conditions
- Posting of a performance bond by the cause marketer
- Specific disclosures on all advertisements of the promotion (including, possibly, disclosures on product packaging)
- Filing of periodic and post-promotion accountings with the state regulators

In short, whoever said "if it seems too good to be true, it's probably false" must have had cause marketing in mind!

Nonprofit Advisor is prepared by the Office of the DAV's General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.