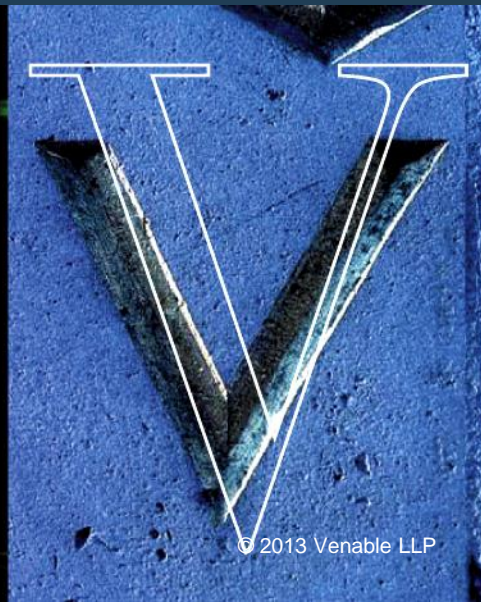
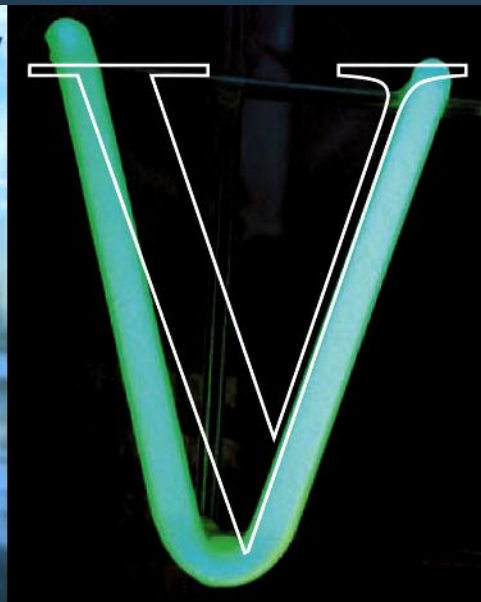
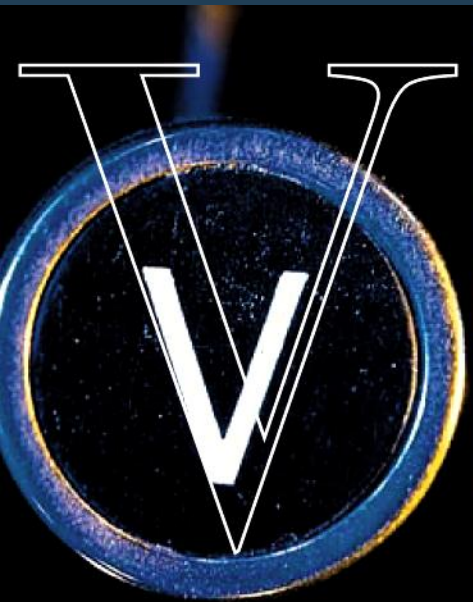


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Raising Funds for Nonprofits: Key Legal Issues, Common Pitfalls & New Intellectual Property Concerns

Better Business Bureau of Metropolitan New York / Venable LLP
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agenda

Charitable Solicitation

- Charitable Solicitation Regulatory Overview
- Legal Considerations for the Charity's Own Fundraising
- Working with Professional Fundraisers
- Commercial Co-ventures
- Federal Tax Considerations

Protecting Intellectual Property

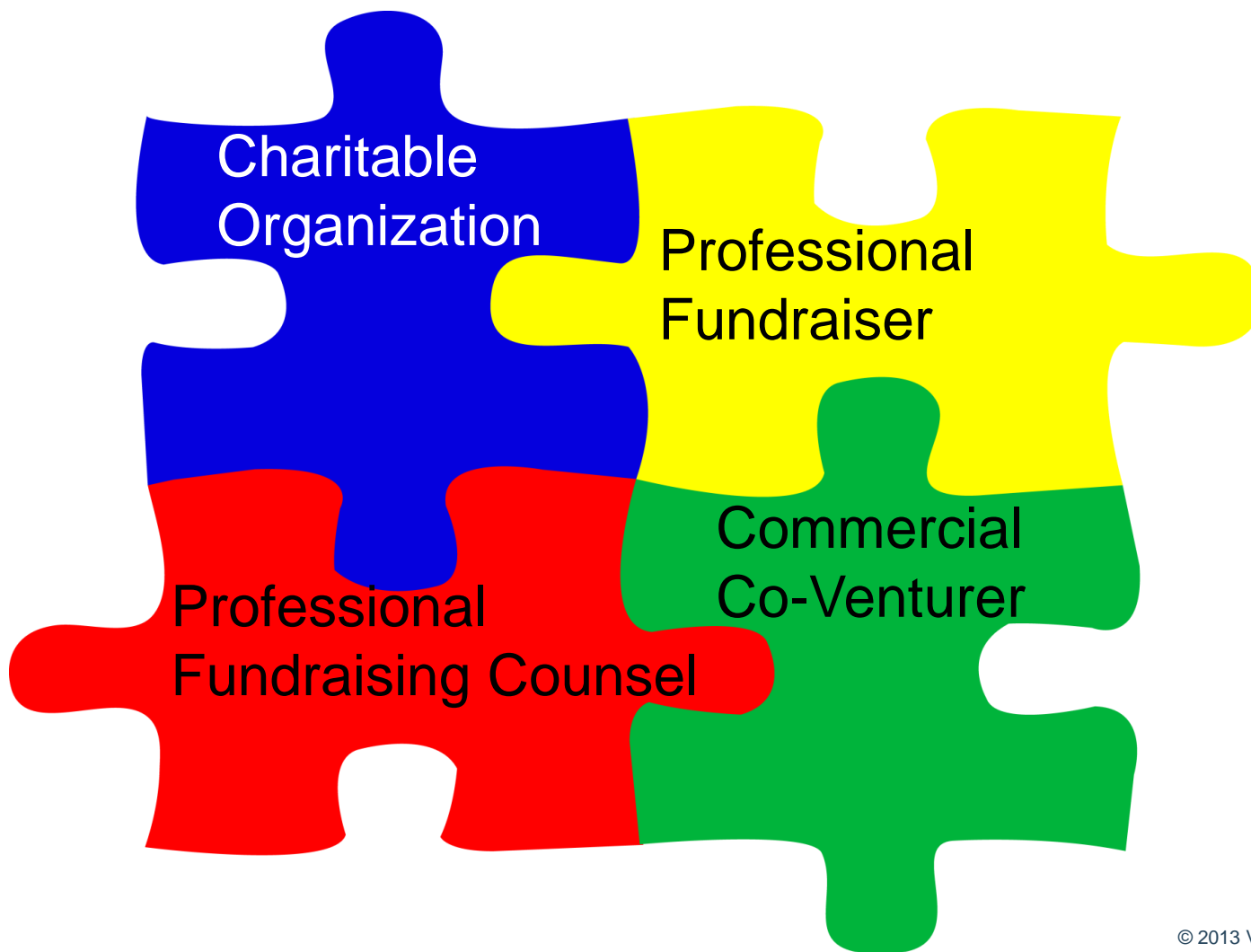
- Intellectual Property Overview
- Facebook Faux Pas
- Crowdsourced Fundraising
- Twitter Legal Updates
- Pinterest Considerations



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Charitable Solicitation Issues

Regulatory Landscape



Charity Registration in 40 States



- Trigger = **“Solicitation”**
 - affirmative act of asking for a gift (“contribution”) OR
 - selling goods/services that will benefit a charitable cause.
 - Broad – “by any means”
 - May include grant solicitation
- **Unified Registration Statement**
 - currently accepted by 36 states
 - not really “uniform”
 - <http://www.multistatefiling.org/>



Charleston Principles

Offline

Letters

Phone
calls

Online

Specifically
target

Repeated
and
ongoing

Substantial
basis



Professional Fundraisers

Professional Solicitor

- For a fee
- Solicits general public on behalf of charity OR
- Has custody and control of funds

Professional Fundraising Counsel

- Manages, advises, plans, produces, or designs a solicitation
- **NO** direct solicitation
- **DOES NOT** hold funds



41 States Impose Requirements

- **Registration**
- **Bond**
- **Filing of Contracts**
- **Disclosures**



Professional Fundraisers – Items for Consideration

- Compensation
- Intellectual Property
- Third Party Assurances
- How is Money Transferred?



Professional Fundraisers Contracts

“MUST HAVE” TERMS

- ✓ **Charity right to rescind**
- ✓ **Listing of fee calculation**
- ✓ **Signature of two charity officials**
- ✓ **Branding & Intellectual Property Terms**
- ✓ **Term and Termination**
- ✓ **Indemnity & Insurance**
- ✓ **Conflict of Interest & Confidentiality**



Commercial Co-ventures: Cause Marketing



Commercial Co-Venture – a person who regularly and primarily is engaged in a trade or business other than the raising of funds for charities that conducts a charitable sales promotion



Charitable sales promotion – Offering goods or services on the representation that the purchase or use of goods or services will benefit a charitable organization or charitable purpose



New Balance Lace Up for the Cure

FREE SHIPPING WITH ANY LACE UP FOR THE CURE ORDER

+ DETAILS

Lace Up Collection


SHOES

- [View All Shoes](#)
- [Casual/Dress](#)
- [Cross-Training](#)
- [Running](#)
- [Sandals & Slides](#)
- [Toning](#)
- [Walking](#)

APPAREL


- [View All Apparel](#)
- [Casual Tops](#)
- [Performance Tops](#)
- [Jackets](#)
- [Shorts & Skirts](#)

ACCESSORIES



LACE UP FOR THE CURE COLLECTION


Honor loved ones who have been affected by breast cancer. Celebrate survivors. Show your support for the cause.



As part of our efforts to promote good health for everyone, New Balance will contribute 5% of the suggested retail price of sales from the Lace Up for the Cure® Collection with a guaranteed minimum donation of \$500,000 to Susan G. Komen for the Cure®.

Lace Up Shoes


Your favorite New Balance running, walking and toning shoes in pink Lace Up designs.



[View All Lace Up Shoes](#)

Lace Up Apparel


The performance apparel you expect from New Balance featuring empowering messages.



[View All Lace Up Apparel](#)


Lace Up Accessories

Show your support from head to toe in hats, socks, bags and more that sport the Lace Up logo.



[View All Lace Up Accessories](#)

As part of our efforts to promote good health..New Balance will donate 5% of the suggested retail price of sales from the Lace Up for the Cure Collection with a guaranteed minimum donation of \$500,000 to Susan G. Komen for the Cure.



Internet 100%



CCV Contracts

- **Term of Agreement and Dates of Solicitation (Dates of Campaign)**
- **Amount to Be Donated (\$ or % of Items)**
- **Geographic Scope of Campaign**
- **Schedule for Donations to be Transferred**
- **Schedule for Reporting**
- **Charity Ability to Cancel**
- ***Branding & Intellectual Property Terms***
- ***Reps and Warrants Re: Compliance With Laws***
- ***Advance Approvals***
- ***Clear Tax Treatment & Description of Activities***



Tax Concerns

- Will the charity be required to promote?
- Unrelated Business Income – income from (i) a trade or business that is (ii) regularly carried on and (iii) is not substantially related to the organization's exempt purpose
- One campaign of short duration – likely okay, but consider aggregate activities



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Intellectual Property Issues

Intellectual Property Overview

- **Trademark:** Any word, name, symbol, device, or any combination, used or intended to be used to identify and distinguish goods/services.
 - Trademark protection is a function of both Federal and State law.
- **Patent:** Any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvements thereof is eligible for patent protection.
 - Patents are governed by federal law.
- **Copyright:** Original works of authorship are protected by copyrights.
 - Copyright protection is granted under Federal law.
- **Trade Secret:** Any confidential business information which provides an enterprise a competitive edge including sales methods, distribution methods, and manufacturing processes.
 - Trade secrets are protected by state law.



Facebook

facebook



Find us on
Facebook

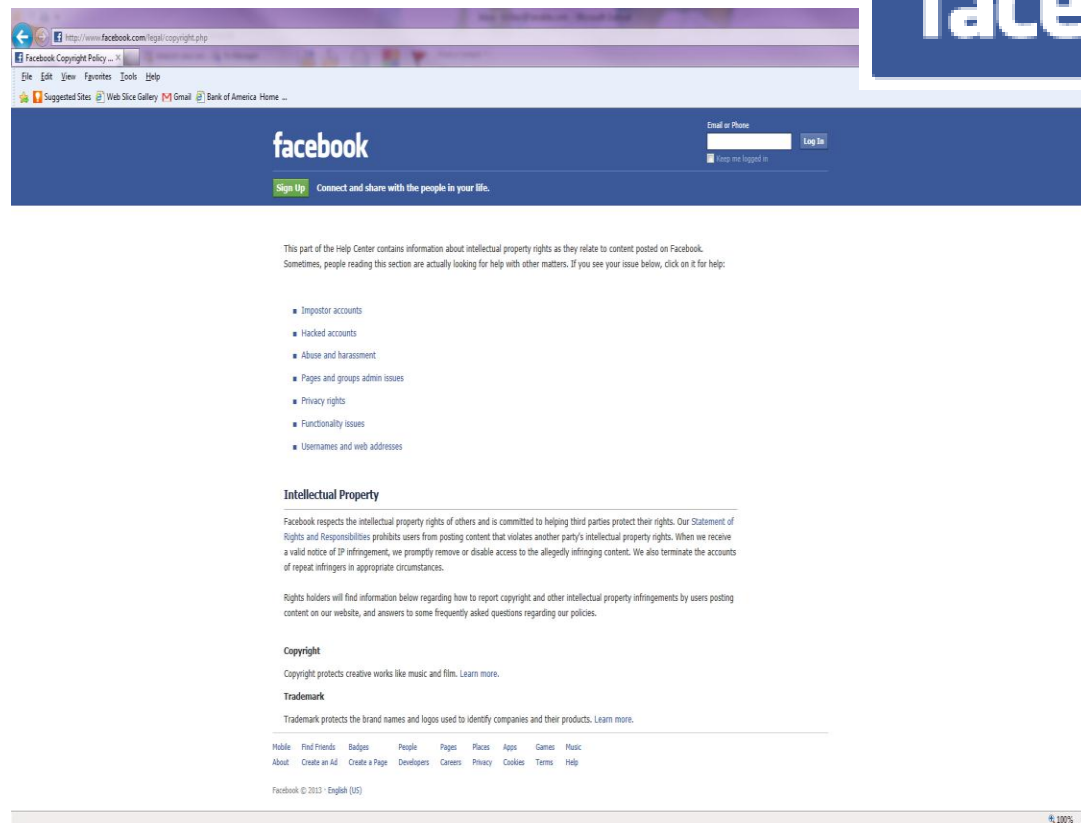


  "like" us on
Facebook

- Facebook is a social networking site that aims to “make the world more open and connected”.
- Facebook is every day becoming a more powerful marketing force with one study finding that consumers think a brand’s Facebook page is more useful than a brand’s website.
- With more than 1 billion users posting and reposting content, Facebook usage presents numerous intellectual property issues.

Facebook

facebook



- Facebook Intellectual Property Policy
 - prohibits users from posting content that infringes on another party's property rights



Facebook Faux Pas



- Monitor Facebook for infringements.
 - Balance IP Protection with Reputation Protection
 - Enforce with Policy Statements, DMCA, Demand Letters, and Legal Proceedings
 - Examine and use Facebook Policies and Enforcement Mechanisms
- Retain express contractual control over use of trademarks by others.
 - Consider false associations
 - Consider what you will allow employees to post
 - Remember: Attribution to entity – actual or apparent



Facebook Faux Pas Cont'd

The Facebook logo, consisting of the word "facebook" in white lowercase letters on a blue rectangular background.

- Audit your own Facebook site
 - Get express consent to use other's IP
 - Use clear placement of appropriate symbols- ©, ®, ™
 - Avoid using third-party trademarks in search terms, domain names, or user names
 - Be careful of false associations
 - Consider copyright ownership issues: Who owns posted content?
- Create and Implement An Effective Social Media Policy



Crowdsourced Fundraising Sites



- Crowdsourced Fundraising sites like crowdrise, razoo, and go fund me allow interested donors and donees to connect with one another over the internet.
- Fundraising efforts reach more potential donors than traditional means of fundraising.



Crowdsourced Fundraising



15 USC § 1125 - False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.



Crowdsourced Fundraising Cont'd



- Unauthorized use of a NFP's name on Razoo.com or Crowdrise.org or a similar site may give rise to Lanham Act claims of false association.
- Consider Monitoring these Sites.
- Take down notices and operator enforcement mechanisms are possible responses when an unauthorized person is using sites and the named nonprofit is not receiving those funds.



Twitter



- Twitter is an information sharing social networking site
- Information is shared in “tweets” which are limited to 140 characters
- Tweets can be directed at particular users using their @username
- Tweets are spread across the internet through followers and users who retweet messages
- Conversation streams are categorized by #topic



Twitter Updates



- Avoid Trademark Misuse
 - Seek Permission.
 - Avoid Using Others' Trademarks or Trade Dress in user names
- Twitter recently updated its policy on takedown requests
- Allegedly infringing tweets will be replaced with a message that the tweet was taken down in response to a request from a copyright holder
 - Consider the reputational harm from a take down notice vs. leaving the infringing material up



Pinterest

Pinterest



Pinit!

- Pinterest is an online scrap book
 - Users copy images and videos and “pin” them to their pinterest pages
 - Pins are organized by topic on boards
- Pinterest is the third most-visited social networking site in the US



Pinterest Considerations



- Pinterest website has a “do not pin” meta-tag available for users available on the Pinterest site
 - `<meta name="pinterest" content="nopin" />`
 - Response: "This site doesn't allow pinning to Pinterest. Please contact the owner with any questions. Thanks for visiting!"
- “Pin Etiquette” asks that users credit their sources
- Monitor Pinterest for objectionable uses of protected intellectual property
 - Consider the dangers of false association
 - Pinterest is a good source of exposure



Questions

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