



# COMMERCIAL COVENTURING

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- I'm not your lawyer
- We have no privileged relationship

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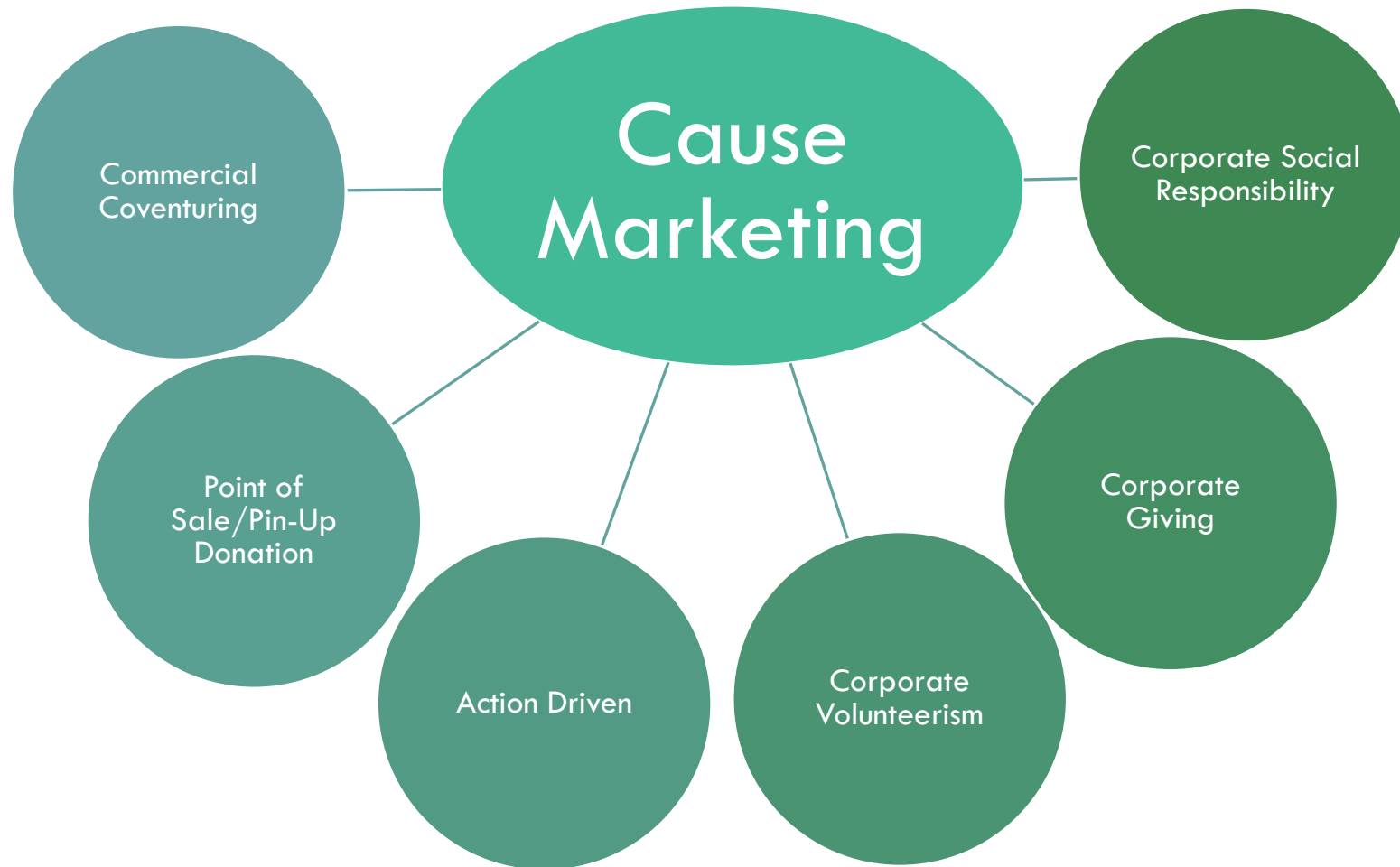
I am not a Tax Lawyer – I don't know anything about tax law

I am a Washington lawyer and not admitted in other states. I am not presenting on the requirements of other states

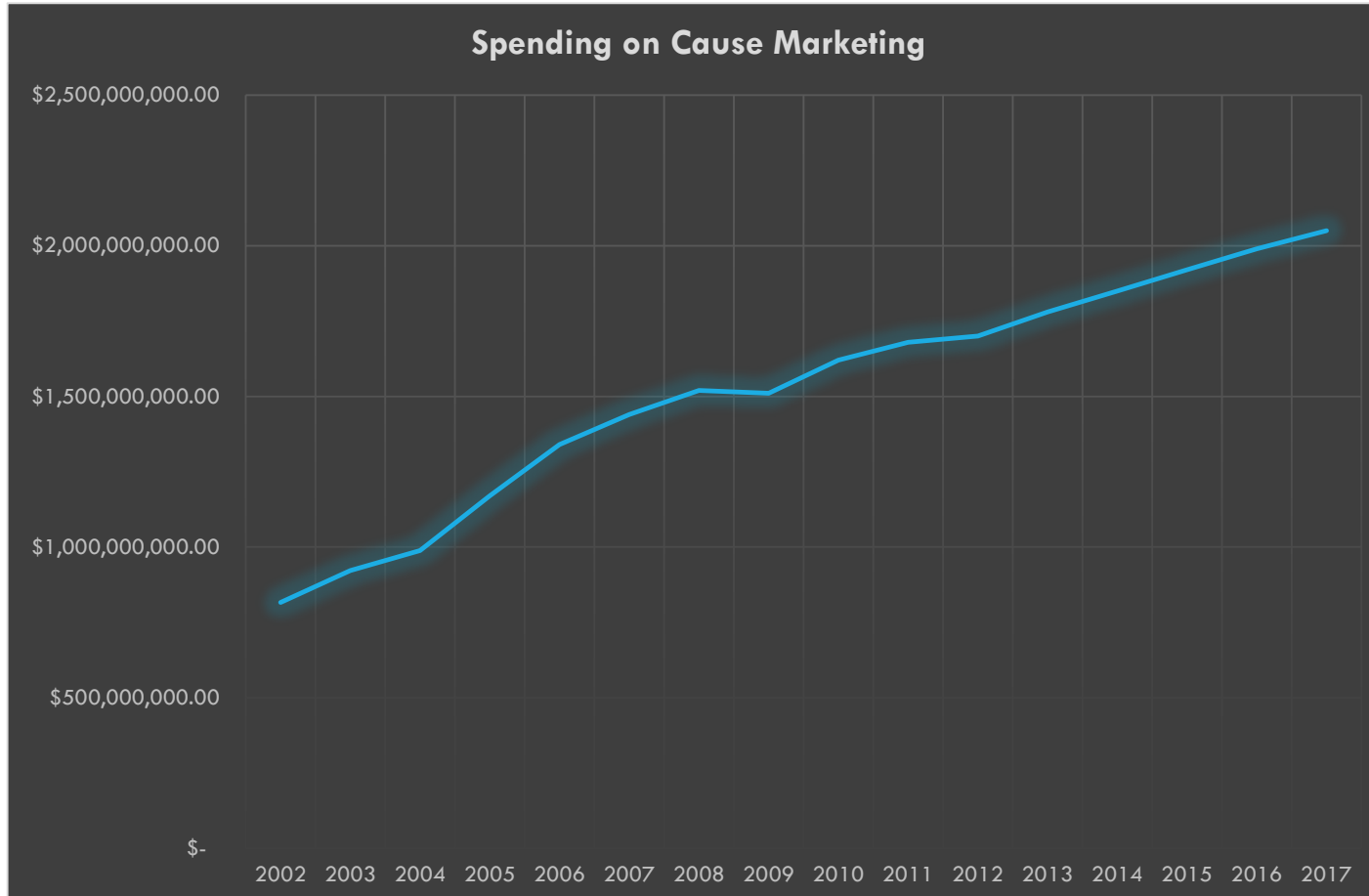
# CAUSE MARKETING

Marketing programs by for-profit entities based on a social or charitable cause.

# CAUSE MARKETING



# GROWING PRACTICE



1990: \$120 million  
2002: \$816 million  
2017: \$2.05 billion

Statistics from Engage for Good

# WHY DO COMPANIES ENGAGE IN CAUSE MARKETING?

- It can positively influence consumer choice
  - 64% choose, switch, avoid, or boycott based on a company's stand on societal issues (EFG)
  - 86% believe companies should take a stand (ENG)
- Millennials & Gen Z are more likely to:
  - Research brands that donate to causes with which they align
  - Pay more for products
  - Sacrifice quality for a good cause
  - 2/3 express a preference for brands that have a POV
- Reputation Matters
  - 35% of Americans think reputation is as important as the product it makes



# WHY DO COMPANIES ENGAGE IN CAUSE MARKETING?

- Tax Incentives
- Positive Press
- More engagement on social media
- A feeling of corporate responsibility
- Reduced employee turnover
  - Dropped 57% where employees felt deeply connected to their companies' giving and volunteering efforts

# WASHINGTON LAW

RCW 19.09.020: Three major types of entities:

## Charitable Organizations

- The charity
- Nonprofit
- Required to register with SOS and report

## Commercial Fund-Raisers

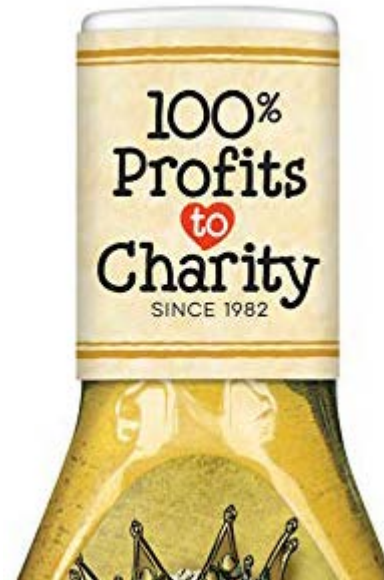
- Any entity that solicits or receives contributions for a charitable organization and gets paid for doing so.
- Can be nonprofit or for-profit
- Required to register with SOS, report, post a bond

## Commercial Coventurers



# WHAT IS COMMERCIAL COVENTURING

A charitable sales campaign where a seller advertises to the consumer that the seller will donate a portion of the purchase price to charity.



# RCW 19.09.020(4)

Or in more technical terms: RCW 19.09.020

(4) “Commercial coventurer” means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

- (a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;
- (b) Is not otherwise regularly or primarily engaged in making solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;
- (c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and
- (d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

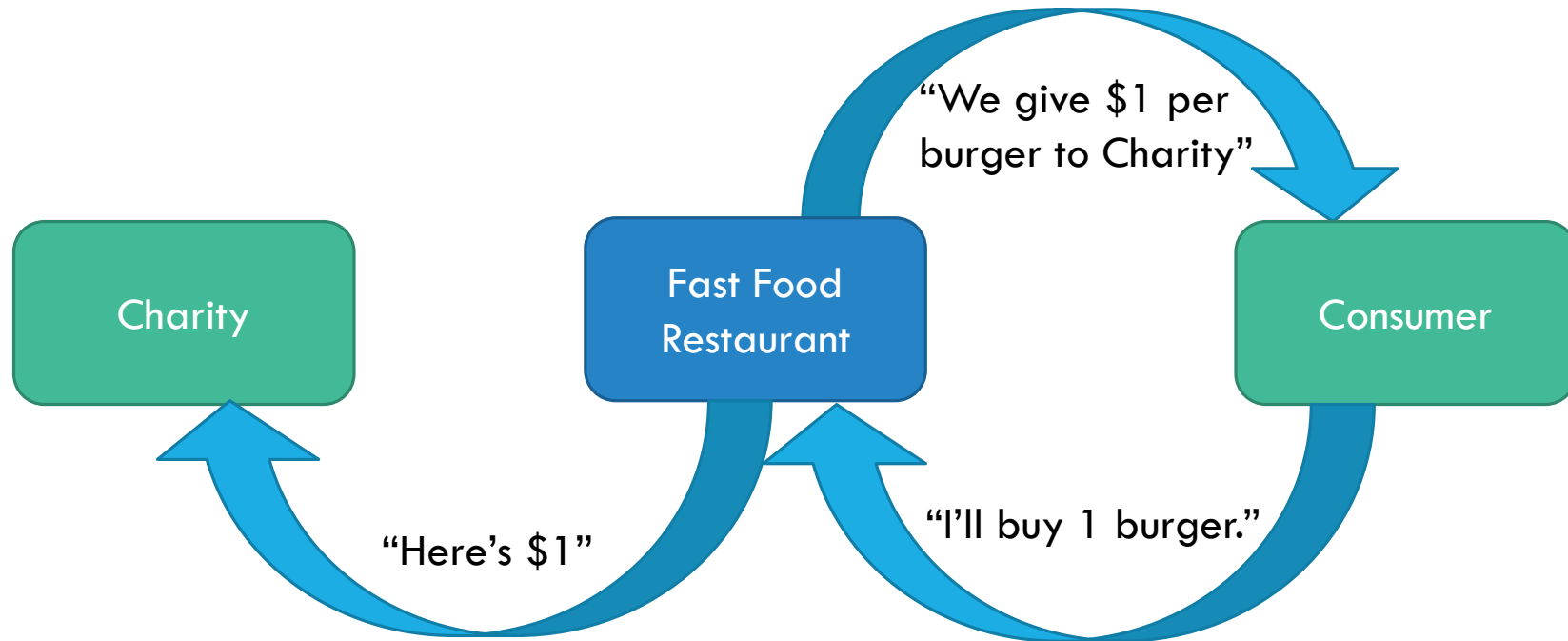
# RCW 19.09.020(4)

Or in more layman's terms:

(4) “Commercial coventurer” means any person or entity, that:

- (a) Primarily sells things or services for profit;
- (b) Is not a commercial fund-raiser;
- (c) Advertises that a portion of the sales price, a specific sum of money, or something else of value goes to a named charity; and
- (d) Transacts business in the coventurer's name – not the charity's.

# COMMERCIAL COVENTURE



# NOT COMMERCIAL COVENTURING

Point of Sale requests for donation



# NOT COMMERCIAL COVENTURING

Point of Sale requests for donation

Advertising your giving



# WASHINGTON STATE REQUIREMENTS

Commercial Coventurers are *NOT* required to register with the SOS

BUT

A commercial coventure *is* a solicitation under the Charitable Solicitations Act

## Solicitation:

- any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:
  - (i) Any appeal is made for any charitable purpose;
  - (ii) The name of any charitable organization is used as an inducement for consummating the sale; or
  - (iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

# WASHINGTON STATE REQUIREMENTS

RCW 19.09.100: A solicitation from a Commercial Coventurer **MUST**

1. Identify the name of the individual making the solicitation
2. Identify the Charity
3. Identify the City of the Charity's Principal Place of Business
4. Not make false or deceptive statements



# *WASHINGTON* STATE REQUIREMENTS

ALSO: The Consumer Protection Act still applies:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

- RCW 19.86.020

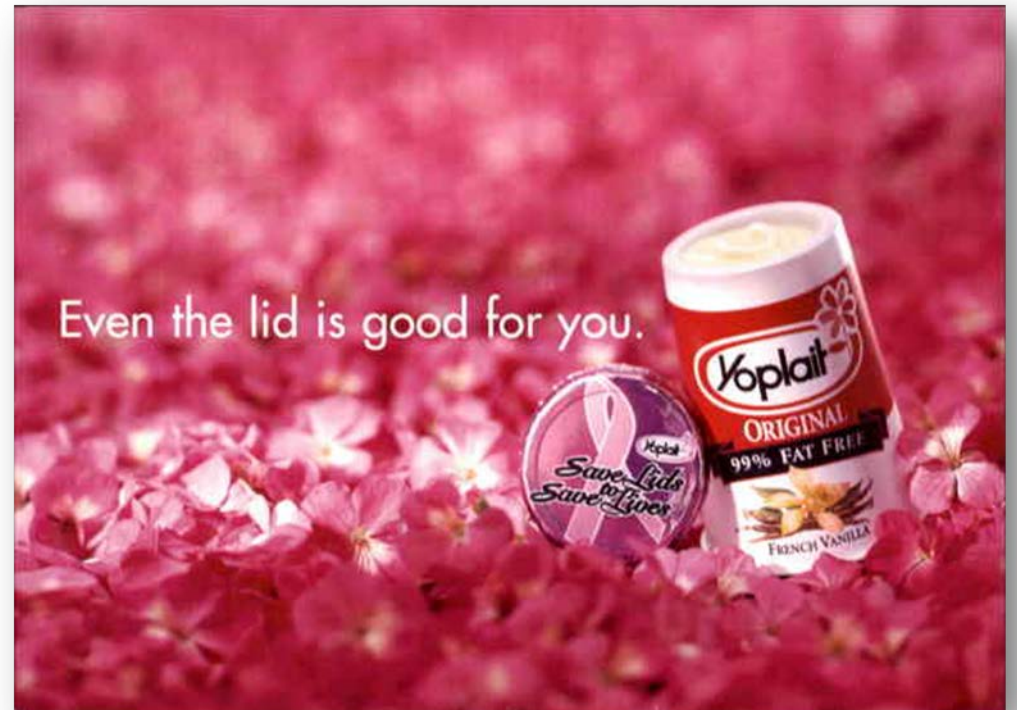
# CONSUMER PROTECTION ACT

## Unfair or Deceptive Act or Practice

### What is unfair or deceptive?

- Test is whether the act or practice (read: the advertisement) has the *capacity* to deceive a substantial portion of the public.
- Measured by the net impression given by the act or practice
- Least sophisticated consumer

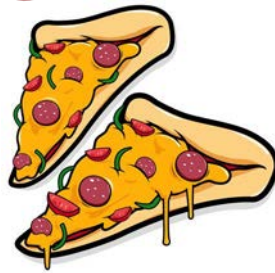
Even accurate and truthful statements can “be deceptive if the net impression it conveys is deceptive.” *State v. LA Investors, LLC*, 2 Wn.App. 2d 524, 540.



# IN PRACTICE

## Josh's Pizza House

Where we donate \$2  
to the Seattle Food  
Bank for every pie  
you buy

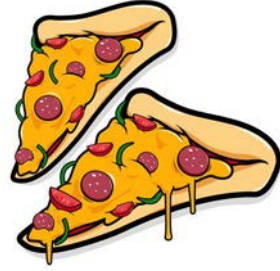


- Is a commercial coventure
- On it's face, no issues: ID's the charity & the city  
BUT what if:
  - Josh's Pizza House doesn't actually make the donation?
  - Makes a donation but it's less than \$2 per pie?
  - Makes a \$2 donation but not for every pie?
  - Makes a \$2 donation but not to a charity?
  - Makes a \$2 donation but only for every cherry pie – not pizza pie

# IN PRACTICE

## Josh's Pizza House

Where we donate a large pizza to the Tacoma Homeless Shelter charity for every pie you buy



- Is a commercial coventure
- On it's face, no issues so long as it actually donates the pizza to the Tacoma Homeless Shelter

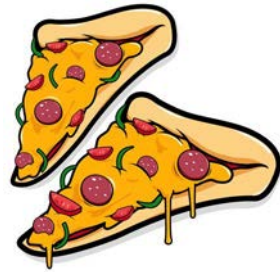
BUT what if:

- It's only the raw ingredients to make a large pizza?
- Josh's Pizza House intended to make the donation but it ran into hard times and couldn't make it?

# IN PRACTICE

## Josh's Pizza House

Where we donate all  
profits to charity



• Is this a commercial coventure?

Why Not?

1. No named charity.
2. Not a sum of money, percent of sales price, and *might* not be a thing of value – what if there is no profit?

Is this a charitable solicitation?

Yes

# BEST PRACTICES

- Keep the promotion simple, clear, and understandable
- Be up-front with the consumer
  - What purchase triggers a donation?
  - What will the donation be?
  - What is the per-unit amount going to charity (\$ or %)
  - Disclose the name of the charity
    - Yes: “We will donate 5% of sales to the American Red Cross.”
    - No: “A portion of our sales goes to disaster recovery.”
- Avoid vague descriptions
  - “All net profits...”
  - “A portion of the purchase price...”



# BEST PRACTICES



- Fit the promotion to your brand and your values.
- Know your time limit – how long is your promotion going to go?
- Set maximum and minimum donations at reasonable levels *and disclose them*
  - “We’ll donate up to \$5,000 of our net sales...”
- Don’t become a commercial fund-raiser:
  - Don’t let the charity take an active role in advertising (could transform into unrelated business income).
  - Don’t take any payment from the charity
- Don’t use the charity’s logo without permission
- If you have multi-state advertising check other states’ laws (30 states regulate).



# SOURCES

Michael J. Barone, Anthony D. Miyazaki, Kimberly A. Taylor, The Influence of Cause-Related Marketing on Consumer Choice: Does One Good Turn Deserve Another?, 28 Acad. of Marketing Science. Journal, 2 (Spring 2000)

Emma Bazilian, Infographic: What Consumers Really Think About Cause Marketing. Adweek (May 3, 2019, 12:42 PM) <http://www.adweek.com/brand-marketing/infographic-what-consumers-really-think-about-cause-marketing/>

Charitable Solicitations Act: RCW 19.09

Consumer Protection Act: RCW 19.86

[www.engageforgood.com](http://www.engageforgood.com)