Rogue fundraisers

When unofficial fundraising is associated with your charity you need to know your rights and be able to act. **Stephen O'Reilly** outlines some occasions when intervention might be appropriate

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There has been increasing concern in the charitable sector recently over the issue of unauthorised fundraising and what can and should be done about it.

Remaining reputable

As charities are no doubt aware, policing their brand is extremely important. The Charity Commission clearly states in its guidance on fundraising: "your charity's reputation is an asset that should be carefully protected". Any damage to the brand will affect a charity's reputation. If a charity has no knowledge of a particular fundraising initiative there are potential risks. For example, the fundraiser may be committing fraud or may be in contravention of charity law.

Authorised fundraising

There are two types of regulated commercial fundraising: professional fundraising and commercial participation. Broadly, professional fundraisers run a business to raise money for charities. A commercial participator, on the other hand, would not be regarded as running its business solely to raise money for charities. Rather, it engages in a promotional venture to raise money for a charity. The commercial participator hopes that customers will be more likely to choose a particular product or service because some of the purchase price will be donated to charity.

There is a requirement that professional fundraisers and commercial participators have written agreements with the charities they are raising funds for. For more information on what such agreements should contain please see the Charity Commission's publication 'CC20 – Charities and Fundraising'.

Solicitation statement

Professional fundraisers and commercial participators must make a 'solicitation statement', which clearly indicates what their relationship is with the charity they are fundraising for and includes detail about how the funds raised from the fundraising activity will be distributed.

Unauthorised fundraising

- If a charity is concerned about a professional fundraiser or commercial participator, it can take out an injunction to stop it from raising money or property for it, if there is no proper agreement with the charity.
- A charity may take steps to stop an individual or organisation, which is not a professional fundraiser or commercial participator, from raising funds for it if it objects to the methods being used for fundraising or does not want to be associated with the fundraising initiative. There is a statutory procedure for doing this.
- Charities can be set up to raise funds for other charities. However, an individual who sets up such a charity may be simply using the charity as a vehicle to make money. In reality, a fundraising company owned by the person who set up the charity may be overcharging for its services and a small proportion of the funds raised may be going to charity. This situation is not covered by the professional fundraiser/commercial participator rules. In an instance such as this a charity may want to refer the matter to the Charity Commission, as the sector regulator, or get an injunction against the bogus fundraising charity. This situation should be contrasted with a charity which raises money for other charities and is not engaged in underhand fundraising techniques.

Witholding funds

If funds are raised for a particular charity and not paid over to that charity, it is known as a breach of trust. The person or organisation that collects the funds becomes a 'constructive trustee'. It holds the funds for the charity, or charitable purposes, the funds were raised for. A failure to pay over such funds amounts to theft.

Protecting your brand

Charities should consider the protection offered by having a registered trade mark. If an unauthorised third party uses a trade mark without a licence there may well be a case for trade mark infringement. The charity could write to the third party requesting that the third party ceases using the trade mark and, if it does not, the charity may seek an injunction. Other remedies, such as damages, are also available.

A trade mark confers a very powerful right. Charities with valuable brands, including their name and logo and brands for particular projects, should consider protecting these by trade marking them.

We have come across a number of instances where third parties are using the valuable brands of our clients without permission. These cases have not just been restricted to fundraising. Third parties are using charities' brands to lend legitimacy to their particular business ventures. It is imperative that charities are vigilant about this and police the use of their brands, especially on the internet.

Respond appropriately

In many cases, unauthorised fundraising may be in the form of a small fundraising activity, such as a cake sale. Generally, instances such as these will not cause problems for a charity. However, where fundraisers use dubious methods or do not account for the funds raised the charity will, in all likelihood, want to take steps to ensure that particular fundraising is stopped. The charity will want to ensure the response to each situation is proportionate.