

Benefit Corporations: Are They Worth It?

Recently, a new trend is circulating throughout the business sector. For-profit corporations are expressing a greater interest in charitable giving and philanthropy. In addition, the United States has seen a rise of “Charitable Fashion.”¹ A prime example of this theme is FEED Products, LLC (Feed Products), a for-profit corporation that promises to donate portions of its income to nonprofit organizations in pursuit of its mission: “to create good products that help FEED the world.”² FEED Products sells purses, shopping bags, clothing, accessories, and other items in many retail stores and online. The company has promised to donate an exact dollar amount from each of its product sales to charities, including the United Nations World Food Programme and Room to Read.³

In response to the rise in charitable corporations like FEED Products, several states have responded by adopting Benefit Corporation legislation.⁴ This legislation allows companies to operate in pursuit of a charitable or public purpose and avoid potential litigation for failing to prioritize pursuit of profits before charitable giving.⁵ Not only can a benefit corporation be protected from some types of shareholder litigation, certification as a benefit corporation shows consumers that the company considers donations to be an important feature of its business model. Several companies have obtained certification as benefit corporations, including Ben and Jerry’s, Etsy, and Patagonia.⁶ Certification is available through a nonprofit called B Lab, which evaluates the corporation’s positive impact.⁷

However, for some companies the advantages to becoming a benefit corporation may still not persuade them to obtain certification. Depending on a company’s annual sales, certification and renewal process can be expensive. According to the New York Times, these expenses can amount to anywhere from \$500 to \$25,000 each year.⁸ In addition, because benefit corporation

¹ http://www.huffingtonpost.com/2012/05/10/charitable-fashion-brands_n_1504038.html

² <http://www.feedprojects.com/our-mission>

³ World Food Programme, http://www.feedprojects.com/shopping_product_detail.asp?pid=49368&catID=3677; Room to Read, http://www.feedprojects.com/shopping_product_detail.asp?pid=49372&catID=3673;

⁴ http://www.nytimes.com/2012/11/09/giving/a-new-yardstick-for-socially-conscious-companies.html?pagewanted=all&_r=0

⁵ <http://www.thenation.com/article/161261/rise-benefit-corporations#>

⁶ Id.

⁷ E.g. <http://www.bcorporation.net/community/directory/etsy>

⁸ http://www.nytimes.com/2012/11/09/giving/a-new-yardstick-for-socially-conscious-companies.html?pagewanted=all&_r=0; <http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/120>

certification is new, consumers will likely not yet be influenced by a company's official certification. Finally, if a company does not have many directors or shareholders, the added protection from shareholders may not influence a small corporation to obtain certification.

Although New York, the state where FEED Products is incorporated, has adopted legislation allowing benefit corporation certification, FEED Products has decided that it will not be obtaining certification anytime soon.⁹ Its founder, Lauren Bush Lauren, disclosed that although she may be interested in seeking benefit corporation status in the future, she is currently satisfied with FEED Products' corporate status because, as a small company, FEED Products is not likely to need protection from its own shareholders.¹⁰

As an alternative to certification, FEED Products' founders started a nonprofit foundation that operates alongside the corporation.¹¹ The FEED Foundation accepts donations that will be earmarked for the same or similar causes that the FEED Product bags support.¹² Although the FEED nonprofit and for-profit entities are separate, they are both dedicated to the same cause: providing support for charitable organizations for school feeding programs, funding classrooms, and related causes around the world. By starting a nonprofit, the FEED Products founders have shown that they are truly dedicated to supporting their charitable cause. This dedication may provide savvy consumers with an added assurance that their money is going to the cause they hope to support. Unfortunately, with this business model, the company's budget is not available to the public. Therefore, the company is not being held accountable to its promise to donate.

For the consumers, if benefit corporation certification is available in a business's incorporating state, certification is likely the best option. However, unless the company has shareholders that are uninterested in the company's public interest decisions, it may be more of a burden for that company to seek certification as a benefit corporation than to continue its public interest focus without certification.

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⁹ <http://open.nysenate.gov/legislation/bill/S79-2011>, <http://www.nytimes.com/2012/11/16/fashion/16iht-fbono16.html?pagewanted=all>

¹⁰ Id.

¹¹ <http://www.thefeedfoundation.org/About-Us>

¹² Compare <http://www.thefeedfoundation.org/feed-funds.asp> with http://www.feedprojects.com/shopping_product_list.asp?catID=3673