



How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk

August 2, 2012

12:00 p.m. – 2:00 p.m.

Venable LLP

575 7th Street, NW

Washington, DC 20004

Moderator:

Jeffrey S. Tenenbaum

Panelists:

Melissa Landau Steinman

Kristalyn J. Loson

Presentation



How Nonprofits Can Raise Money and Awareness through Campaigns without Raising Legal Risk

Thursday, August 2, 2012
12:30 p.m. – 2:00 p.m. EDT

Venable LLP
Nonprofit Organizations Practice
Washington, DC

Moderator:
Jeffrey S. Tenenbaum, Esq.
Panelists:
Melissa Landau Steinman, Esq.
Kristalyn J. Loson, Esq.



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Upcoming Venable Nonprofit Legal Events

September 13, 2012 - Litigation Basics for Nonprofits: What to Do When a Complaint or Subpoena Is Served and Other Tips and Strategies – Details Coming Soon

October 16, 2012 - Poring over Your Foundation: Making Sure Your Nonprofit's Directors & Officers Insurance Coverage Matches Your Expectations (and Vice-Versa) – Details Coming Soon



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Agenda

- Charitable Solicitation Requirements Overview
- Regulatory Update
- Social Media Implications
- Raffles / Sweepstakes
- Promotions Through Social Media
- Mobile Giving
- Auctions
- Hypothetical Campaign



Charitable Solicitation *Current State Regulation*

- A. Charity / Nonprofit Organization
- B. Professional Solicitor
 - Professional fundraiser
 - Professional fundraising counsel / consultant
- C. Commercial Co-venturer



Charitable Solicitation – *Charitable Organization Regulation*

- About 40 States Require Charities to Register
- **Triggering Definition** – Generally triggered by “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
- **Typical Exemptions**
 - Religious organizations
 - Organizations that do not raise more than a specified amount from public (all states) if fundraising conducted by volunteers
 - Organization soliciting only within membership
 - Hospitals
 - Named individual
- **Uniform Registration Statement** – currently accepted by 38 states
 - <http://www.multistatefiling.org/>



Charitable Solicitation – *Charitable Organization Regulation*

- Common Requirements
 - *Registration and renewal*
 - *Disclosures when soliciting (i.e. identification)*
 - *Annual reporting requirements*



Charitable Solicitation *Internet Solicitations*

- **Charleston Principles** – set of voluntary principles drafted by the National Association of State Charity Officials (NASCO).
 - Adopted into statute by only a couple of states
 - Requires registration of:
 - (A) Charitable organizations domiciled in state
 - (B) Charitable organizations not domiciled in state when:
 - **offline activities** would be enough to assert jurisdiction (e.g. – send letter or make phone calls into state)
 - solicit donations on Internet and (1) specifically target those within that state OR (2) receive contributions from the state on a repeated and ongoing basis or a substantial basis through their website



Charitable Solicitation *Charleston Principles – Application*

- *Example – a nonprofit, the Southwest Animal Charity, is headquartered in, has its principal office in, and holds all physical events within Texas. The organization provides funding to individuals throughout the U.S. (or grants to organizations throughout the U.S.). The organization has a website through which it accepts donations from throughout the U.S. Some of the individuals on the mailing list for emails and for U.S. mail are located outside of Texas.*
- Technically must register in:
 - Texas
 - States where sending U.S. mail / email messages
 - States from which “substantial” or “repeated and ongoing” contributions are received
- Consequences for failing to register:
 - Most of the time states will be lenient for first offense
 - BUT non-registration could be felony with fine of up to \$10,000
 - Reputational harm – consent orders



Charitable Solicitation

Professional Solicitor / Professional Fundraising Consultant Regulation

- **Professional Solicitor** – for a fee, solicits the general public on behalf of a charity OR has custody and control of funds
- **Professional Fundraising Counsel** – manages, advises, plans, produces or designs a solicitation, no direct solicitation and not holding funds
- About 41 states require registration and other requirements
 - *Registration*
 - *Bond*
 - *Filing of Contracts*
 - *Disclosures*



Charitable Solicitation

Commercial Co-Venture Regulation

- **Commercial Co-Venture (“CCV”)** – An arrangement between a charity and a commercial entity under which the commercial entity advertises in a sales or marketing campaign that the purchase or use of its goods or services will benefit a charity or charitable purpose
 - *“Every time you buy a bottle of Ethos® Water, you contribute 5 cents to the Ethos® Water Fund, part of the Starbucks Foundation”*
- About 25 states have laws that specifically regulate CCVs
 - *Registration*
 - *Bonding*
 - *Written Contract*
 - *Advertising Disclosures*
 - *Accounting and Recordkeeping*



Charitable Solicitation *Regulatory Update*

- Regulators starting to take notice.
- NY AG Breast Cancer Investigation
 - October 2011 – questionnaires sent to over 40 charities / 130 for-profit companies involved in commercial co-venturer activities
 - Questions track statutory requirements – Contract? Accounting? Minimum or Maximum Contribution?
 - Also request, “television, print media, email, Twitter, Facebook, or in-store advertising”
- Other states?



Charitable Solicitation *Social Media Implications*

- “One Big Grey Area”
- *But*, look toward same basic principles for analysis -- all the traditional rules apply



Charitable Solicitation *Social Media Implications*

(1) Is There a Solicitation?

- Facebook posts
 - Status – “Instead of going to see 'The Grey', donate that \$10 to the [Grand Canyon Wolf Recovery Project!](#)” (HSUS – Arizona - <https://www.facebook.com/#!/HSUSArizona/posts/313603705349384>)
 - Others' status
- Twitter Feeds
 - “Right NOW every donation to the ASPCA is DOUBLED—help twice as many animals! [#DoubleYourImpact](http://ow.ly/aoDOd)”



Charitable Solicitation *Social Media Implications*

(2) Is Another Party Receiving Consideration For Solicitation?

- Facebook status loans
- Re-tweets
- Charitable Platforms (crowdrise.org, donorschoose.org)
 - Is there compensation provided to site for posting or ranking?
 - Who provides the content?
 - Where does “donation” button go?



Professional Fundraiser?

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At ChangingThePresent you can help make the world a better place, one gift at a time! It's easy to give these gifts to your friends and also use them for your own charitable giving.

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Choose a Cause

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 - Human Rights
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 - Milennium Goals
 - Water
- Community**
 - Aging
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 - Children & Youth
 - Civil Society
 - Peace
 - Public Broadcast
 - Refugees
 - Veterans
 - Women
- Environment**
 - Agriculture
 - Animal Welfare
 - Environment
 - Global Warming
- Health and Safety**
 - Blindness & Vision

Charitable Gifts from ChangingThePresent

- Stop Toxic Dumping** - One reporting trip - \$45
 - Fund for Global Human Rights
 - Your gift will fund one trip for an activist to help document and report ongoing abusive practices against these communities. Because of the work of Fund grantee Green Advocates, these local communities are starting to organize, resist, and generate media attention. [more](#)
- Fight Corruption** - One hour of work - \$75
 - Transparency International USA
 - Your gift will provide one hour of tool development, helping TI-USA develop and promote anti-bribery codes and implementation programs and benchmarking tools for the private sector. [more](#)
- Connect Generations** - One art performance - \$75
 - Generations United
 - Your gift will allow one performer to attend and participate in an intergenerational performance. [more](#)

ABOUT | I'M A FUNDRAISER | I'M A NONPROFIT | DONATE | CHAOS | e.g. Find Events, People, Charities |

718,882 FUNDED

WILL'S CHARITABLE LIFE | CROWDFUNDER VERIFIED

VOTE FOR WILL | ADD TO FRIENDS | POST A COMMENT FOR WILL

DONATE

\$48,085 1 WISER

DONATIONS

Brian Bullock	\$30
Vince Vigil	\$30
Shawn Murray	\$30
Alex Yarnoch	\$30
Jan Abers	\$10

1 FUNDRAISERS

WILL
Help me send some cancer survivors to college! Donate \$19 and my friends at CFC will send you my Super Sexy Hot Tan Sunscreen.
via Crowdfunder 1 month ago

MY CROWD | MY RISE

CROWDFUNDER MEMBER SINCE APR 26, 2010
HOME: San Diego, CA United States
PERSONAL WEBSITE: www.cancerforcollege.org
ROCK PAPER OR SCISSORS PAPER

STUFF ABOUT ME:
Hi, I'm Will Farrell
Cancer for College is an organization started by a friend of mine that helps fund college scholarships for cancer survivors. We all know how expensive hospital visits, surgeries and treatments can be. By the time the cancer battle is over, getting back on your feet is incredibly difficult.
Cancer for College is performing miracles and removing that barrier by

Charitable Solicitation Social Media Implications (3) Are Goods or Services Being Offered Under Premise Will Benefit a Charity?

– “We can see it from our desks”



Charitable Solicitation *Dealing with the Grey Area*

- Recognize the effect of going viral – potential nationwide registration
- For any charitable solicitation partner – representations and warranties
- Consider broad definition of “consideration”
- Check in with regulator



Fundraising Raffles/ Sweepstakes

- Federal law and all states prohibit lotteries (except state-run lotteries). A lottery has the following elements:
 - (1) The awarding of a **prize**
 - (2) By **chance**, where
 - (3) The participants have been required to submit **consideration** to enter
- In many states certain charitable fundraising games of chance are exempt from lottery prohibitions, subject to registration/permit requirements for charitable gaming
- Skill and chance promotions that do not require consideration may not be subject to residency and registration requirement
- For lawful prize promotions, legal requirements for advertising disclosures and rules are extremely specific



Endorsements and Testimonials on Social Media

When are nonprofits and charities responsible for what social media posters/commenters and bloggers say about their charities under FTC rules re endorsements and testimonials?

FTC revised Endorsements and Testimonials Guides in 2009 to include examples addressing social media

Bloggers or other social media marketers who have a relationship with the company about which they are blogging must disclose the relationship

Entity needs to have policy/procedures to make sure bloggers disclose and monitor compliance

"Influencer" who receives money or in-kind payments must disclose relationship

Employees blogging on their own time should also disclose their affiliation when talking about the charity

Organization cannot use a comment/blog that it knows is wrong/deceptive to say something it otherwise could not say.

Are "likes" endorsements?



"You walk the walk and talk the talk. We need someone who can also blog the blog!"



Fundraising Raffles/ Sweepstakes

Types of Use of Raffles

- "Buy a ticket for \$5 for a chance to win a car. All ticket proceeds benefit Kid's Charity."
- "Raise \$1,000 or more for The Food Pantry Walkathon, and you'll be entered into a raffle to win a trip to Tahiti."
- "Your ticket to The Event includes entry into raffle for several fabulous door prizes!"



Fundraising Raffles / Sweepstakes (cont'd)

- In some states, an organization must have been in existence in the state for a minimum amount of time to qualify for charitable gaming exemption.
 - E.g., Indiana
 - An organization must have been continuously in existence in Indiana for at least 5 years; OR
 - The organization must be affiliated with a parent organization that has been in existence in Indiana for at least five 5 years.
- Residency and registration/permit requirements limit ability to offer fundraising gaming via the Internet



User Generated Content on Social Media

1. Prize Promotion rules/terms of use should include provisions releasing IP rights and limiting liability
 - Limit to only those rights needed—don't overreach
 - How does one obtain the signed, written release required to obtain copyright?
2. Screen and/or regularly review promotion entries, postings and comments.
 - Consider removing posted promotion entries if they pose legal risk
 - BUT, many companies no longer remove negative comments on websites due to backlash ("a screenshot is forever"), address in other ways
3. Consider using disclaimers stating that the sponsor had no hand in producing the user-generated content, and, where appropriate, stating that the content does not reflect the opinions of the sponsor
4. Use other tools such as DMCA policies, CDA to protect against infringing content



Promotions through Social Media

- Social Networking sites – Facebook, Twitter, LinkedIn – have their own rules that apply to prize promotions run by nonprofits as well as for-profits.

facebook Promotion Guidelines:

- Promotion may not be administered directly on the site, must be administered through a third-party Facebook Platform application
- Cannot use Facebook functionality or feature as an entry mechanism; e.g., “Liking” a profile page or posting a comment on a wall. Also cannot condition entry into the promotion upon taking any other action on Facebook; e.g., liking a status update or uploading a photo.
 - However, can condition entry on a user “liking” a Facebook page, checking in to a “Place”, or connecting to the Facebook platform-based promotion application *as part of* the entry process. E.g, can require that users “like” a Facebook page and then submit a completed entry form to enter.
 - Must include specific releases, acknowledgments and disclosures regarding Facebook’s non-affiliation with the promotion and the promotion sponsor’s collection of data from entrants in the rules and on entry form



User Generated Content Promotions on Social Media

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Promotions through Social Media (cont'd)

Guidelines:

- Discourages creation of multiple accounts; rules regarding retweeting to enter
- Limits number of tweets/entries to one per day
 - *E.g.*, don't encourage retweets to win
- Recommends including @usernameMention in tweet entries so each entry will be visible in user timeline
- Suggests including relevant "hashtag" topics in tweet entries
 - *E.g.*, #promotion or #companyname.



Google+: Limits offering prize promotions on Google+, e.g., you cannot run a sweepstakes on your Google+ page, although you can link to one from your page.

Pinterest: Permits prize promotions, but "pin to win" UGC promotions may raise copyright and trademark issues.

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Mobile Giving

- CTIA, The Wireless Association® Guidelines for Mobile Giving via Wireless Carrier's Bill
 - Qualified charities may lease short codes from the CTIA operated Common Short Code Administration at a 60% reduction to published rates for commercial short code campaigns
 - Must be accredited by the BBB Wise Giving Alliance or receive three- or four-star rating from Charity Navigator.
 - Can mix communications, promotions and mobile giving with the code as long as the campaign complies with the Mobile Marketing Association's guidelines and provide consumers with a separate opt-in for each type of activity

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Mobile Giving



- **Telephone Consumer Protection Act** – prohibits using automatic dialing systems to make calls to wireless devices without express prior consent
 - Text messages included in “calls”
 - *Satterfield v. Simon & Schuster* – must have prior consent from the consumer to receive messages from that specific entity (not affiliate)
 - Prior donor or membership doesn’t count as consent
 - FCC Rulemaking – text messaging could require express written authorization
- **Carrier Rules and Regulations** have additional requirements for engaging in mobile giving campaigns – size of charity, years in existence, etc.



Auctions and Reverse Auctions



- Bid on item; may be asked to pay for each bid (money, points)
- Functions much like a sweepstakes, similar issues, need similar disclosures
- Note: US gaming policy recently relaxed
 - DOJ reversed its position on the applicability of the U.S. Wire Act to online gambling that does not involve sports betting
 - May clear the way for States to enable intra-state online gaming
 - May signal that the Federal government will consider licensing and regulation permitted online gambling
 - Indicates less strict interpretations of games of chance v. lottery issues
 - Important for “gamification”, advergaming as well



General Dot Com Disclosure Considerations

- FTC last issued online advertising disclosure guidelines 12 years ago.
- Now re-examining guidance on how to make disclosures online/on social media/using mobile devices, e.g.:
 - When are hyperlinks sufficient? Is requiring consumers to scroll down for terms ok?
 - Are there certain types of promotions that should not be attempted on certain media because their terms are simply too complex to be disclosed there?
- Could affect the requirements for charitable solicitation and promotions...stay tuned.

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Privacy Issues

- Basic principles when collecting user data:
 - Must adhere to the promises made to consumers regarding privacy and data protection (privacy policies/other statements)
 - Must implement reasonable and appropriate measures to protect personal data against theft
 - Must disclose when will use or sell data – remember, data is an asset
- “Hot” issues:
 - Geo-location
 - Behavioral advertising and tracking
 - Children’s privacy
- What comes next in terms of regulation?

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Federal Tax Consequences – Unrelated Business Income

- Generally, organization is not taxed on income related to tax-exempt purpose.
- UBI – income generated from regularly carried on trade or business that is not substantially related to tax-exempt purpose
 - **Exclusion for Qualified Sponsorships – IRS Code 513(j)**
 - Less than 2% fair market value of contribution
 - Acknowledgment vs. advertising
 - **Exclusion for Certain Gaming Events – IRS Code 513(a)(1) / 513(f)**
 - Income and gaming events staffed by volunteers and
 - Bingo games
- Reported on Form 990, Schedule G if more than \$15,000.



Hypothetical Fundraising Campaign

- A concert promoter and a nonprofit cancer awareness organization team up to promote the concert and raise funds for the nonprofit:
 - *A giveaway drawing offering VIP concert tickets as the prize*
 - *5% of the proceeds from ticket sales will go to the nonprofit*
 - *The giveaway and 5% donation advertised via radio, TV, and the Internet*
 - *At the concert, a text-to-give campaign is announced*
- The following legal requirements apply:
 - Charitable raffle registration and disclosure requirements
 - Commercial co-venture laws
 - Mobile giving/marketing laws



Closing Thoughts

- When planning fundraising promotions, allow for ample lead time for compliance with any applicable laws (e.g., any registration requirements) for both charity and any partners.
- Consider your target audience.
- Assess whether fundraising campaign is worthwhile in light of compliance costs/burden. Further, determine whether the campaign will not only help achieve financial goals, but will also effectively promote your organization's brand.
- A highly visible fundraising campaign that was not carefully planned can lead to PR damage, attorney general enforcement matters, or even class action.



Questions and Discussion

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To view Venable's index of articles, PowerPoint presentations, recordings, and upcoming seminars on nonprofit legal topics, see www.Venable.com/nonprofits/publications, www.Venable.com/nonprofits/recordings, www.Venable.com/nonprofits/events.



Speaker Biographies



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AREAS OF PRACTICE

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 Tax Policy
 Tax-Exempt Organizations
 Wealth Planning
 Regulatory

INDUSTRIES

Nonprofit Organizations and Associations
 Credit Counseling and Debt Services
 Financial Services
 Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting trade and professional associations, charities, foundations, think tanks, credit and housing counseling agencies, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was the inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the 2012 *Legal 500* rankings, and was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. He started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill.

REPRESENTATIVE CLIENTS

AARP
 American Academy of Physician Assistants
 American Association for the Advancement of Science
 American Association of Museums
 American College of Radiology
 American Institute of Architects
 Air Conditioning Contractors of America
 American Society for Microbiology
 American Society for Training and Development
 American Society of Anesthesiologists
 American Society of Association Executives
 American Society of Civil Engineers
 American Society of Clinical Oncology
 American Staffing Association
 Associated General Contractors of America
 Association for Healthcare Philanthropy
 Association of Corporate Counsel
 Association of Private Sector Colleges and Universities
 Automotive Aftermarket Industry Association
 Brookings Institution

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

The College Board
Council on Foundations
Cruise Lines International Association
Foundation for the Malcolm Baldrige National Quality Award
Goodwill Industries International
Homeownership Preservation Foundation
Independent Insurance Agents and Brokers of America
LeadingAge
Lions Club International
Money Management International
National Association of Chain Drug Stores
National Athletic Trainers' Association
National Coalition for Cancer Survivorship
National Defense Industrial Association
National Fallen Firefighters Foundation
National Hot Rod Association
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
National Telecommunications Cooperative Association
The Nature Conservancy
NeighborWorks America
New York Blood Center
Peterson Institute for International Economics
Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America
Romance Writers of America
Texas Association of School Boards
Trust for Architectural Easements
Volunteers of America

HONORS

Recognized as "Leading Lawyer" in the 2012 edition of *Legal 500*, Not-For-Profit

Listed in *The Best Lawyers in America 2012* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.)

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has

served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, published by the American Society of Association Executives, and is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. He also is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer for ASAE and many of the major nonprofit industry organizations, conducting over 40 speaking presentations each year, including many with top Internal Revenue Service, Federal Trade Commission, U.S. Department of Justice, Federal Communications Commission, and other federal and government officials. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal issues on Voice of America Business Radio and Nonprofit Spark Radio.



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 Banking and Financial Services
 Regulation
 Regulatory

INDUSTRIES

Consumer Products and Services
 Nonprofit Organizations and
 Associations
 Credit Counseling and Debt
 Services
 Consumer Financial Protection
 Bureau Task Force

BAR ADMISSIONS

Maryland
 District of Columbia

COURT ADMISSIONS

U.S. District Court for the District
 of Columbia

Melissa Landau Steinman practices primarily in the areas of advertising and marketing, antitrust, trade regulation, consumer protection and general commercial law, litigating cases and counseling clients on matters that arise from these business concerns. She is uniquely familiar with the technology, retail and hospitality industries.

Ms. Steinman focuses her practice on assisting companies at every stage of distributing their products, reviewing advertising and marketing materials for all types of media, vetting pricing and "sales" claims, creating product warranties and advising clients on product safety issues, and addressing related intellectual property and privacy matters. She has represented clients in both private and government litigation relating to these matters, with experience handling both class action and Lanham Act matters, as well as Federal and State government investigations. Most recently, Ms. Steinman wrote and edited the "Guide to Federal and State Regulation of Advertising," a comprehensive two volume book/CD-ROM on the law of advertising and promotions.

Ms. Steinman has developed a unique specialty in consumer promotions law, with experience in the federal and state laws applicable to promotional tools such as gift cards, rebates, "free" gifts, and rewards programs. In particular, Ms. Steinman has an unusual depth of knowledge with prize promotions and Internet gaming, combining understanding of the law of promotional contests, electronic media, and federal and state regulatory law. In her gaming practice, Ms. Steinman has worked with a diverse clientele that includes some of the nation's largest consumer products and services companies, Internet gaming and gambling providers, game show producers and entertainment conglomerates, software companies, and a wide variety of charitable entities. Ms. Steinman has written extensively on the subject of sweepstakes and contests, as well as charitable promotions and commercial co-ventures: she contributed chapters to the American Bar Association's new *Consumer Protection Law Handbook*; the Promotion Marketing Association's new edition of its treatise on *Promotion Marketing Law*; and Venable's e-book, *So You Want to Be on the Internet*. She has spoken frequently on promotions and other issues and her commentary has appeared nationally in publications as prominent as the *Los Angeles Times*.

Ms. Steinman also has extensive experience working with clients on distribution antitrust issues. She represented the defendant in one of the first resale price maintenance cases filed after the Supreme Court's decision in *Leegin Creative Leather Products v. PSKS, Inc.* In addition, she has worked with numerous association clients on their antitrust policies, standards and certification programs, codes of ethics and other programs and policies. She has spoken widely on various topics relevant to associations, including antitrust, intellectual property and antitrust; associations and standard-setting; privacy and other issues.

HONORS

U.S. District Court for the District of Maryland

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Supreme Court

EDUCATION

J.D., Harvard Law School, 1993

B.A., *cum laude*, Columbia University, 1990

MEMBERSHIPS

American Bar Association

Maryland Bar Association

District of Columbia Bar Association

Promotion Marketing Association

Women's Bar Association of the District of Columbia

Recognized in the 2010 - 2012 editions of *Legal 500*, Marketing and Advertising

ACTIVITIES

Ms. Steinman serves on the Board of the Directors of the Promotion Marketing Association, with her term starting this year; she is also active in the PMA's Legal and Government Affairs Center of Excellence. She is a member of the Antitrust Division of the American Bar Association, including the Consumer Protection and Privacy Subcommittees, the Maryland Bar Association, the District of Columbia Bar Association, and the Women's Bar Association of the District of Columbia.

PUBLICATIONS

- July 12, 2012, Advertising News & Analysis - July 12, 2012, Advertising Alert
- July 2012, New Jersey's Gift Card Law Requires ZIP Code, Extends Abandonment, Provides "Cash Back", Advertising Alert
- April 12, 2012, Advertising News & Analysis - April 12, 2012, Advertising Alert
- April 2012, Gift Card Sellers Take Note: Groupon Settlement and New Developments in New Jersey May Affect Your Business Strategy, Advertising Alert
- February 14, 2012, How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risks
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- August 18, 2011, Advertising News & Analysis - August 18, 2011, Advertising Alert
- January 2011, Are You Ready? New Recordkeeping Requirements if You Offer Gift Cards in New Jersey, Advertising Alert
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- November 19, 2010, Mobile Marketing Statutory/Regulatory Overview
- October 2010, FTC Proposes Revised Green Marketing Guides, Client Alerts
- May 2010, When Marketing Through Social Media, Legal Risks Can Go Viral
- January 2010, U.S. Department of Energy Finalizes Landmark Energy Efficiency Consent Decree, Environmental Alert
- June 11, 2009, Historic Credit Card Crackdown Law Affects Creditors, Credit Card Issuers, Gift Card Sellers, Colleges and More, Financial Services Alert
- July 1, 2008, *Promotion Marketing Law*, Sixth Edition
- January 1, 2008, *Consumer Protection Law Handbook*, American Bar Association
- December 2007, *The Guide to Federal and State Regulation of Advertising*, Volume 1
- March 2007, Prize Promotion Do's and Don'ts
- December 2006, Gift Cards: The New Plastic in Your Wallet and How the Government Regulates Them, *Electronic Retailing Magazine*
- August 15, 2006, In the Matter of Rambus: Lessons for SSOs and Their Members
- July 6, 2005, Promotions, Privacy and Postage
- September 27, 2004, Vertical Restraints and Distribution: Complying with the Antitrust Laws
- September 1, 2004, New Antitrust Protection for Standards Development Organizations
- April 2004, Legal Issues Affecting Standard-Setting: Antitrust and Intellectual Property
- November 21, 1999, So You Want To Be On The Internet ®
- September 1, 1997, COMPAQ amicus brief

SPEAKING ENGAGEMENTS

- August 2, 2012, How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk
- May 22, 2012, "Fundamentals of Marketing and Advertising Law" at RCI International
- May 4, 2012, "Sweepstakes, Promotions and Marketing Laws: Comprehension & Compliance" at the New York City Bar Center for CLE
- February 14, 2012, Legal Quick Hit: "How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risks"
- February 8, 2012, "Understanding the Legal Issues in Social Networking" live webcast for the Knowledge Congress
- January 26, 2012, "Effectively Using New Promotional Techniques on Social Media and Mobile Applications Without Violating the Law," Legal Risks in Emerging Technologies Conference, hosted by Marcus Evans
- December 1, 2011, Legal Quick Hit: The Regulatory Regime for Social Media (Yes, There is One – or Rather Several): Traps for the Unwary
- November 15, 2011 - November 16, 2011, PMA's 33rd Annual Marketing Law Conference
- November 11, 2011, "Social Media Risk Management" at the Council for Resource Development's 45th Annual National Conference
- February 11, 2011, "The New Look of Gift Cards" at Sweepstakes, Promotions & Marketing Laws: Comprehension & Compliance Conference hosted by the City Bar Center for CLE
- January 26, 2011, "Social Media Law," presented by Law Seminars International (LSI)
- January 13, 2011 - January 14, 2011, "Social Media Legal Risks and Strategy," Marcus Evans conference
- November 19, 2010, PMA's 32nd Annual Marketing Law Conference
- October 26, 2010, "Marketing via Mobile Devices: Enforcement and Litigation Trends," Strafford Webinar
- September 24, 2010, 4th Annual Focus on Sweepstakes, Contests & Promotions
- April 30, 2010, "Understanding and Complying with Sweepstakes, Promotions and Marketing Laws," a New York City Bar Event
- February 12, 2010, Understanding & Complying with Sweepstakes, Promotion and Marketing Laws
- April 16, 2009, Promotional Marketing Association webinar "Gift Cards: A Legal and Strategic Marketing Perspective"
- November 20, 2008 - November 21, 2008, "More Compliance: Fees, Fines and Fear in the World of Gift Cards and Rebates" at the 30th Annual PMA Promotion Marketing Law Conference
- November 15, 2007, "For All You Do: Incentives, Rewards, and Gift Cards" at the Promotion Marketing Association 29th Annual Promotion Marketing Law Conference
- September 1, 2007, "Complying with Maryland's New Consumer Protection Law – Personal Information Protection Act" at the Maryland Retailers Association Annual Leadership Conference
- December 12, 2006 - December 13, 2006, The 28th Annual Promotion Marketing Law Conference
- August 15, 2006, Panel of Antitrust Pundits in Telebriefing on FTC's Rambus Decision
- June 30, 2005, Direct Marketing Association's DM Days New York Conference & Expo 2005
- June 12, 2005, "Intellectual Property, Antitrust and Standard-Setting" at the Practising Law Institute's Intellectual Property Antitrust 2005

- September 29, 2004, Instructional Systems Association Audioconference



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AREAS OF PRACTICE

Regulatory
Advertising and Marketing
Tax-Exempt Organizations

INDUSTRIES

Nonprofit Organizations and Associations
Credit Counseling and Debt Services
Education

BAR ADMISSIONS

District of Columbia
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EDUCATION

J.D., *with honors*, The George Washington University Law School, 2009

The Public Contract Law Journal, *member*

George Washington University Domestic Violence Project Clinic

B.A., *cum laude*, University of Miami, 2005

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Honoree*

Kristalyn J. Loson is an Associate in Venable's Regulatory Practice Group. She focuses her practice primarily on nonprofit organizations and associations, assisting charities, trade and professional associations, and other nonprofit organizations on a wide array of legal issues, including incorporation and tax-exemption applications, tax-exemption compliance and IRS audits, corporate governance, membership issues, contracts, and charitable solicitation regulation, among others.

Prior to joining Venable, Ms. Loson served as a *pro bono* staff attorney for the Guardian ad Litem Program, 20th Judicial Circuit of Florida. While earning her law degree, she also completed internships with the U.S. Department of Justice's Civil Division, and the U.S. Attorney's Office. She also served for a year as a judicial intern in the chambers of the Honorable Fern Flanagan Saddler of the Superior Court of the District of Columbia.

Prior to entering law school, Ms. Loson worked as a fundraiser for a large multi-national nonprofit organization. Through her experience in the nonprofit sector, she has gained perspective on the unique needs of these organizations, both legal and otherwise.

PUBLICATIONS

- July 26, 2012, Second in Series of Hearings on Tax-Exempt Sector Held by U.S. House of Reps. Ways and Means Subcommittee
- June 26, 2012, Agreeing to Convene: Spotting and Solving the Most Common Event Contract Pitfalls
- May 9, 2012, The Top Ten Things You Need to Know about the New District of Columbia Nonprofit Corporation Act
- April 26, 2012, Social Media and Charitable Solicitation Considerations
- February 28, 2012, Nineteen Questions Every Cause-Related Marketer Should Be Prepared to Answer: Lessons from the NY Attorney General's Investigation of Breast Cancer Cause-Related Marketing
- February 28, 2012, Charitable Solicitation and Commercial Co-Venturer Red Flags: Insights for Charities and Marketers from the NY Attorney General
- December 19, 2011, The New D.C. Nonprofit Corporation Act Takes Effect on Jan. 1, 2012: Everything You Need to Know to Comply
- December 2, 2011, Advertising News & Analysis - December 2, 2011, Advertising Alert
- November 22, 2011, Cause-Related Marketing in the Crosshairs: What the New York Attorney General's Breast Cancer Investigation Means for Nonprofits and Their Corporate Supporters
- November 18, 2011, The New D.C. Nonprofit Corporation Act Takes Effect on Jan. 1,

2012: Everything You Need to Know to Comply

- October 17, 2011, Lobbying: What Does It Mean for 501(c)(3) Organizations?
- October 17, 2011, Lobbying: What Does It Mean for Nonprofits?
- October 13, 2011, Advertising News & Analysis - October 13, 2011, Advertising Alert
- October 2011, Avoid Legal Pitfalls in Cause Related Marketing, *Electronic Retailer Magazine*
- September 26, 2011, Preventative Planning: Avoiding Common Legal Pitfalls in Hotel, Convention Center and Meetings Contracts
- September 15, 2011, Lobbying: What Does It Mean for Nonprofits?
- August 2011, Contracting for Housing Services
- August 11, 2011, Avoiding Legal Pitfalls in Cause-Related Marketing
- June 20, 2011, IRS Announces First Round of Revocations for Nonprofits that Failed to File Form 990
- April 29, 2011, Developing and Managing a Successful Fundraising Campaign
- April 29, 2011, Raising Funds, Not Eyebrows: Legal Considerations in Fundraising
- April 13, 2011, Considerations in Mergers and Asset Transfers of Credit Counseling Agencies
- October 18, 2010, Avoiding UBIT Pitfalls
- October 2010, Key Steps to Forming and Operating a Nonprofit, Tax-Exempt Charity
- June 3, 2010, A Lesson in Compliance: IRS Releases Interim Report on Nonprofit Colleges and Universities Compliance Project (Long Version)
- June 3, 2010, A Lesson in Compliance: IRS Releases Interim Report on Nonprofit Colleges and Universities Compliance Project (Short Version)
- May 7, 2010, Massive Loss of Tax Exemptions Looming
- February 5, 2010, Mortgage Assistance Relief Services Targeted in Federal Trade Commission Rulemaking, Credit Counseling Alert
- 2009, *Improving Privatization: How Federal Procurement Concepts Can Solve Lingering Problems in State Contracts for Child Welfare*, 38 Pub. Cont. L.J. 956

SPEAKING ENGAGEMENTS

- August 2, 2012, How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk
- June 28, 2012, Featured on Cause Marketing Radio Show
- June 27, 2012, WMACCA Non-Profits & Associations Forum: "Agreeing to Convene – Spotting and Solving the Most Common Event Contract Pitfalls"
- May 3, 2012, "Hot Topics - The District of Columbia Nonprofit Corporation Act of 2010" at AFG's 10th Annual National Conference on Association Foundations & Fundraising
- April 26, 2012, "Social Media and Charitable Solicitation Considerations" at the 2012 Exempt Organizations General Counsel Conference
- April 24, 2012, "Contracting for Meeting Planning 101: Getting the Best Terms for Your Client" at The George Washington University School
- February 28, 2012, "Cover Your Meetings: Everything You Need to Know About Meetings Insurance" at DMAI's Destinations Showcase
- February 16, 2012, "Everything You Need to Know to Comply With The New D.C. Nonprofit Corporation Act" at West, Lane & Schlager Realty Advisors Applied Knowledge Lunch Series
- December 19, 2011, The New D.C. Nonprofit Corporation Act Takes Effect on Jan. 1, 2012: Everything You Need to Know to Comply
- September 26, 2011, "Preventative Planning: Avoiding Common Legal Pitfalls in Hotel, Convention Center and Meetings Contracts" at the Small Market Meetings Conference
- June 14, 2011, Legal Quick Hit: "Raising Funds without Raising Eyebrows: Legal

Considerations for Nonprofits" for the Association of Corporate Counsel's
Nonprofit Organizations Committee

- April 29, 2011, Developing and Managing a Successful Fundraising Campaign
- October 18, 2010, "Confusing Stuff You Need to Know to Keep You and Your Chamber Out of Trouble" for the Western Association of Chamber Executives (WACE)
- September 21, 2010, "Nonprofit 101" at Howard University Business School, hosted by Delta Sigma Phi

Additional Information

appropriate content and use such policies to help manage the association's responsibility and potential liability. A clear take-down policy also should exist.

13. Protect your intellectual property and use proprietary notices. Consider use of a ™, ® and/or © symbol in connection with more prominent placements of intellectual property and otherwise provide notices and conditions for any use of intellectual property by other users within an online social network.

14. Guard against antitrust risks. Social networking sites and related media can make it easy for members to let their guard down and share information that could lead to a violation of the antitrust laws. Remind members that they may not communicate via association-sponsored social networking to make an anti-competitive agreement or even to share competitively sensitive information.

15. Don't ignore employer/employee considerations. An association should define its role, as well as the expectations it has for its employees' behavior when they are using social networking sites for association business purposes.

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This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.

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Articles

February 28, 2012

Nineteen Questions Every Cause-Related Marketer Should Be Prepared to Answer: Lessons from the NY Attorney General's Investigation of Breast Cancer Cause-Related Marketing

Related Topic Area(s): Antitrust and Trade Regulation

In November 2011, it was widely reported that the New York Attorney General (the "NY AG") had opened an investigation into the cause-related marketing efforts of "pink ribbon" charities. As part of its examination, the NY AG sent comprehensive questionnaires to at least 40 charities and 130 companies asking for detailed information specific to activities in which the sale of a product or service is advertised to benefit a charitable cause. Venable has since obtained a redacted copy of a typical questionnaire sent to companies involved in cause-related marketing related to breast cancer, a version of which appears below.

A cause-related marketer should review these questions (with a more in-depth analysis available [here](#)) to ensure that adequate answers could be given about a proposed campaign in the event of an investigation by a state regulator such as the NY AG.

Please answer the following questions regarding cause marketing campaign(s) concerning breast cancer conducted by your company and/or any of its subsidiaries, divisions or brands ("your company") at any time since October 1, 2009. For purposes of this questionnaire, cause marketing means any marketing of products or services which states or suggests that a charity or charitable cause will benefit from the purchase or use of the product or service. Please use a separate questionnaire for each cause marketing campaign and add additional pages to the questionnaire if necessary.

1. Name of your company.
2. Please name the charity or charitable cause that is the subject of your responses below.
3. What are the start and end dates for the campaign?
4. If the campaign has not ended, what is the date on which it is expected to end?
5. Identify the product(s) or service(s) used in connection with the campaign. (Attach additional pages if necessary)
6. Identify each method used to advertise or otherwise promote the product or service in connection with the campaign. Check all that apply:

<input type="checkbox"/> product packaging	<input type="checkbox"/> in-store advertising
<input type="checkbox"/> television	<input type="checkbox"/> radio
<input type="checkbox"/> print media	<input type="checkbox"/> website (provide web address)
<input type="checkbox"/> email	<input type="checkbox"/> Facebook
<input type="checkbox"/> Twitter	<input type="checkbox"/> other (describe)
7. Does (or did) the campaign require the consumer to take any action, other than making a purchase, in order for the charity or charitable cause to receive a benefit? (for example, mailing in a label or entering a code on a website)

Yes No
If Yes, please describe.
8. Please describe any benefit that the campaign stated or suggested would be provided to the charity or charitable cause.
9. Please describe the procedures for calculating the benefit due to the charity or charitable cause.

10. If the campaign stated that a percent or amount of your company's profits or proceeds or other financial measure would be paid to the charity or charitable cause, describe how "profits" and/or "proceeds" or other measure are defined and calculated.

11. Did your company guarantee a minimum contribution to the charity or charitable cause?

q Yes q No

If Yes, what amount was guaranteed?

12. Did your company place a limit (cap) on the amount it would pay to the charity or charitable cause?

q Yes q No

If Yes, what is the amount of the limit (cap)?

13. If there is a limit or cap, are procedures in place for discontinuing the promotion once the limit or cap is reached?

q Yes q No

If Yes, describe the procedures.

14. What are your procedures for disposing of and/or re-labeling remaining products after the termination of the campaign?

15. What is the total value of the contribution or other benefit that your company has provided to charity since the campaign began? List the date and amount of each payment or other benefit. (Attach additional pages if necessary)

16. If any contribution or other benefit has not yet been provided, please state below the date(s) on which such contribution or benefit is expected and the estimated value of such contribution or benefit. (Attach additional pages if necessary)

17. Identify each of your company's products that contained marketing for the campaign, and state the number of such products produced for the campaign and the number sold during the campaign. (Attach additional pages if necessary)

18. Did your company enter into a contract or other written agreement with any charity concerning the campaign?

q Yes q No

If Yes, please attach copies.

19. Have you provided accountings or reports to any charity detailing the amounts due to the charity in connection with the campaign?

q Yes q No

If Yes, please attach copies.

For more information, please contact Kristalyn Loson at 202-344-4522 or at kjloson@Venable.com, or Jonathan Pompan at 202-344-4383 or at jlpompan@Venable.com.

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Jonathan Pompan is Of Counsel at Venable LLP in the Washington, DC office. He represents nonprofit and for-profit companies in regulated industries in a wide variety of areas including advertising and marketing law and financial services regulation compliance, as well as in connection with Federal Trade Commission, Consumer Financial Protection Bureau, and state investigations and law enforcement actions.

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.

