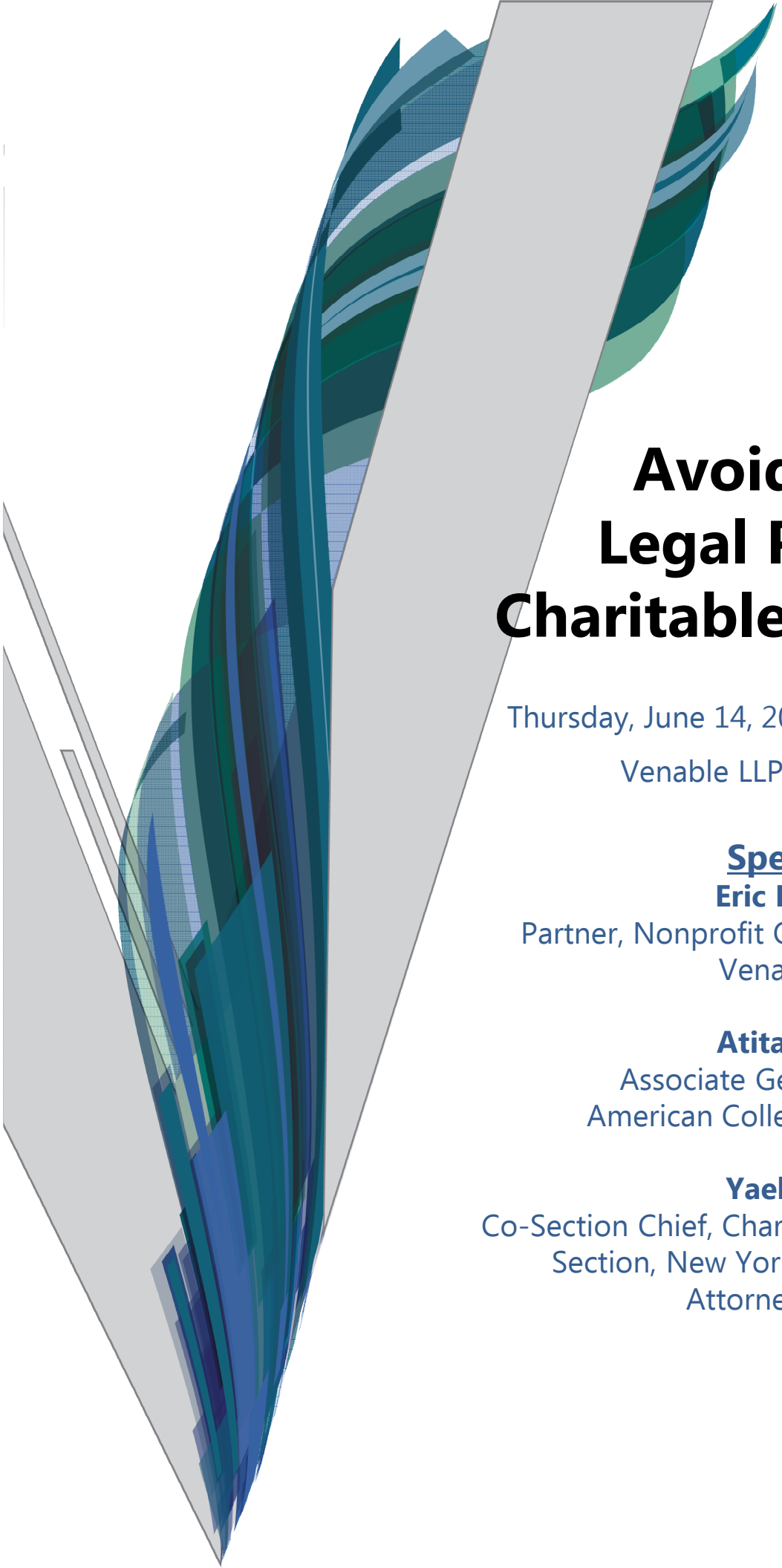


VENABLE

Avoiding the Legal Pitfalls of Charitable Fundraising

Thursday, June 14, 2018, 4:00 pm – 5:30 pm ET

Venable LLP, Washington, DC

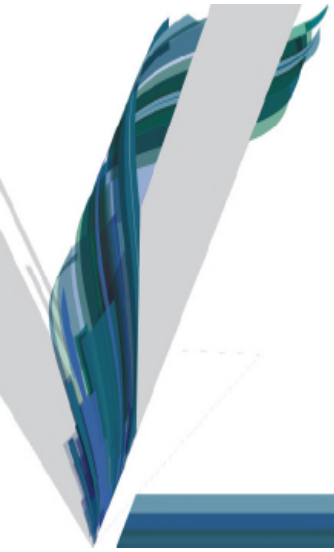
Speakers

Eric Berman
Partner, Nonprofit Organizations Practice,
Venable LLP

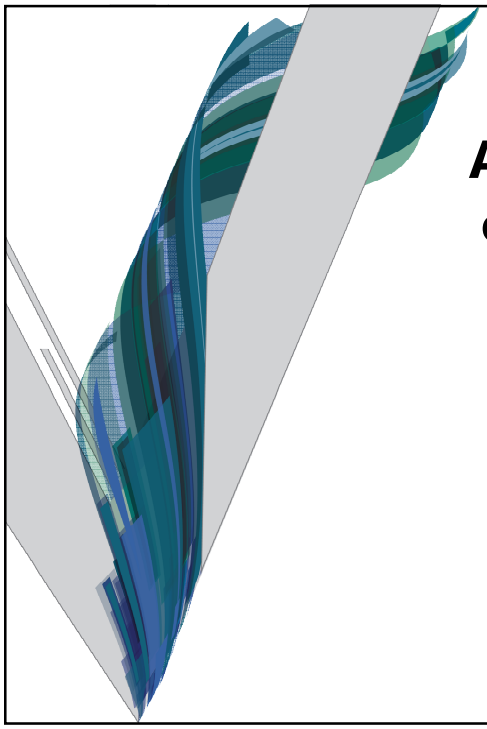
Atitaya Rok
Associate General Counsel,
American College of Cardiology

Yael Fuchs
Co-Section Chief, Charities Bureau Enforcement Section, New York State Office of the Attorney General

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Presentation



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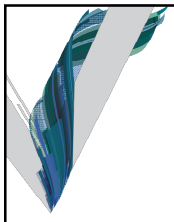
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Upcoming Venable Nonprofit Events

Register Now

- **Summer Break:**
  We will resume our nonprofit programs in Fall 2018.

- **September 20, 2018:**
  Donor Advised Funds—What's the Fuss?
  (details and registration available soon)

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"Loose" Agenda

- The Regulatory Landscape for Charity Fundraising
- What Do the Regulators Regulate?
  - Traditional fundraising models
  - Newer platforms
  - "Private" regulators (aka Plaintiffs' lawyers)
- Other Considerations
- Compliance Checklist

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Who Gets Regulated?

- Charitable Organizations
- Professional Fundraisers
- Professional Fundraising Counsel
- Commercial Co-Venturers

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Who Does the Regulating?

- State Attorneys General (sometimes Secretary of State)
  - Increased coordination: multi-state enforcement actions; NAAG/NASCO, single portal
- Federal Trade Commission
  - Telemarketing Sales Rule
  - Jurisdictional issues
- Federal Communications Commission
  - Telephone Consumer Protection Act

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Traditional Fundraising

- Telemarketing and direct mail
- Riskiest, from regulatory perspective
  - Highest percentage of donor complaints
  - Greatest potential for abuse
  - Implicates basic false advertising principles
  - Private TCPA actions
- Other regulator concerns
  - "Bottom feeder" organizations
  - Accounting practices (Gift-in-Kind; Joint Cost Allocation)

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Alternative Fundraising Business Models

- Thrift stores
  - Business model being scrutinized (MN, WA, and MI enforcement actions)
  - Disclosure issues
  - IP licensing issues
- Online platforms
  - Social media and mobile giving
- Events
- Charitable promotions

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(More) Alt. Fundraising Business Models

- Crowdfunding
  - Regulatory tension: safeguarding consumers or chilling innovation?
  - Who are the parties affected by regulation?
  - What are the risks?
    - Hidden fees, privacy/cybersecurity, donor intent, fraud, misrepresentations, etc.
  - NASCO working group
- Virtual and augmented reality
  - Yeah, it's cool, but what are the issues?

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Other Key Considerations

- Donor intent
- IRS issues
- Donor lists/IP rights

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Compliance Checklist

- Registration and reporting
- Solicitation disclosures
- Due diligence
- Agency principles
- Accounting and recordkeeping

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Questions?

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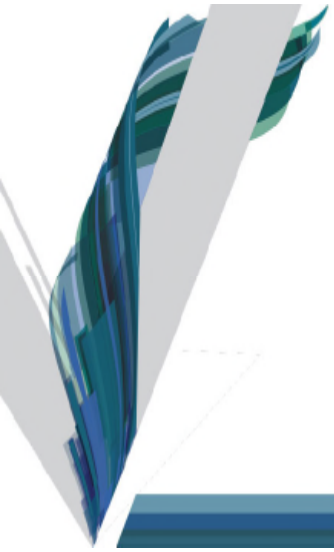
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Speaker Biographies

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our people



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Eric Berman's client service primarily involves counseling, regulatory advocacy, and litigation defense in the areas of consumer protection and antitrust. He represents large companies, trade associations, tax-exempt organizations, and closely held businesses before both the consumer protection and competition bureaus of the Federal Trade Commission ("FTC"), the Department of Justice's Antitrust Division ("DOJ"), and the state attorneys' general.

As part of Venable's highly regarded advertising practice, Eric advises national retailers, manufacturers, nonprofits, fundraisers, telemarketers, financial services firms, and dietary supplement sellers on how to reduce risk associated with their advertising claims, marketing practices, and business operations. His practice increasingly focuses on helping organizations navigate complex and sometimes multi-faceted law enforcement investigations by federal and state regulators. Recently, Eric was lead defense counsel to multiple parties in the first consumer protection lawsuit ever filed by the FTC, all 50 state attorneys general, and the District of Columbia.

Eric is also an experienced antitrust attorney who has represented merging parties and third parties in complex merger reviews before the FTC, DOJ, and foreign competition authorities. He has also defended market-leading firms in complex litigation brought under Section 1 of the Sherman Act. Eric maintains a broad-based counseling practice in which he advises companies and associations about the antitrust risks associated with a range of business issues, and he has experience conducting internal investigations and implementing compliance programs for antitrust-sensitive firms.

SIGNIFICANT MATTERS

Consumer Protection and Advertising

- Lead counsel to multiple nonprofits and their principals in sweeping FTC and 50-state litigation;
- Co-lead counsel to national charitable organization during pendency of state attorney general investigation;
- Co-lead counsel for dietary supplement marketer in FTC false advertising investigation of weight loss claims;
- Advertising counsel to leading home products retailer;
- Lead counsel for window manufacturer in FTC industry sweep of energy efficiency claims;
- Lead counsel for building and home materials seller in FTC action involving insulation performance claims; continue to serve as general FTC compliance and unfair competition counsel;
- Co-lead counsel to UK-based conglomerate against attempted injunction lawsuit filed by FTC's Northwest Regional office involving debt collection activities.

AREAS OF PRACTICE

Regulatory

Antitrust

Advertising and Marketing

Class Action Defense

Mergers and Acquisitions

Investigations and White Collar Defense

State Attorneys General

Tax-Exempt Organizations

INDUSTRIES

Consumer Products and Services

Dietary Supplements, Cosmetics and Functional Foods

Nonprofit Organizations

BAR ADMISSIONS

District of Columbia

New York

EDUCATION

J.D., George Washington University Law School, 2002

B.S., Cornell University, 1999

MEMBERSHIPS

ABA, Section of Antitrust Law

DC Bar Association, Antitrust and Consumer Law Section

DRI, Program Chair, Antitrust & Consumer Protection Group

Antitrust – Mergers, Litigation and Counseling

- Represented third party in major FTC merger challenge in the foodservice distribution industry;
- Advising multiple companies on compliance issues and information exchanges;
- Reviewed and updated global antitrust compliance program for market leading merchant and manufacturer;
- Advised pediatric physicians' association on antitrust issues relating to formation of children's hospital;
- Defended major consumer electronics company in price-fixing litigation brought by private plaintiffs; led defense of related *parens patriae* actions brought by State Attorneys General;
- Represented acquiring and acquired firms before U.S. and foreign competition authorities in the antitrust review of multiple large-scale transactions.

HONORS

Selected for inclusion in *Washington DC Super Lawyers Rising Stars Edition*, 2017

Recognized in *Legal 500*, Advertising and Marketing, 2017

PUBLICATIONS

- April 3, 2018, Another Dismissal of TCPA Claims Involving Nonprofits, *Law360*
- January 19, 2018, Customs slams $55K in counterfeit sneakers, FTC targets charity fundraisers' telemarketing, and more in this issue of *Advertising Law News & Analysis*
- January 17, 2018, FTC Brings Law Enforcement Action Against Telemarketing Charity Fundraiser
- November 2017, In Landmark Decision, TCPA's Nonprofit Exemption Survives Federal Court Challenge Intact, *New York Nonprofits e-Newsletter*
- November 1, 2017, In Landmark Decision, TCPA's Nonprofit Exemption Survives Federal Court Challenge Intact, Nonprofit Alert
- October 26, 2017, A landmark decision on the TCPA's do-not-call provisions, a CFPB enforcement vet joins Venable, and more in this issue of *Advertising Law News & Analysis*
- March 30, 2017, Making a bad situation worse, a rude awakening for companies with advertising injury coverage, and more in this issue of *Advertising Law News & Analysis*
- March 27, 2017, Highlights of the FTC and NASCO Conference – Give & Take: Consumers, Contributions, and Charity, *All About Advertising Law Blog*
- March 16, 2017, Keeping basketball-related ads out of court, potential hazards of using social media in ad campaigns, and more in this issue of *Advertising Law News & Analysis*
- February 2, 2017, Chairman Olhausen's new consumer protection agenda, big changes to the federal regulatory process, and more in this issue of *Advertising Law News & Analysis*
- November 29, 2016, It's Never Too Late: Enhancing Charity Fundraising Transparency and Legal Compliance at Year-End, Nonprofit Alert
- November 17, 2016, FTC and NASCO Will Jointly Host March 2017 Conference on Charitable Giving and Consumer Protection, Nonprofit Alert
- November 2, 2016, Don't Let "Pink" Marketing Lead to Others Seeing Red, Nonprofit Alert

SPEAKING ENGAGEMENTS

- June 14, 2018, "Avoiding the Legal Pitfalls of Charitable Fundraising," a Venable LLP Webinar
- April 26, 2018, "Choose Your Own (TCPA Litigation) Adventure" for an Advertising

Law Symposium hosted by Venable LLP

- November 10, 2016, Federal and State Regulators and Watchdog Groups Are Bearing Down on Charities and Their Professional Fundraisers: How to Prepare for the Regulatory Storm
- March 17, 2016, "Sports Report: Sports, Consumer Protection, and Antitrust - What's Hot in 2016!" for the American Bar Association Antitrust Section
- January 21, 2016, "Spotting Deceptive Marketing Issues When Your Company Uses Social Media" for DRI's Corporate Counsel Committee
- October 7, 2015, "Complex Litigation Against Nonprofits in the Consumer-Protection Context: A War on Multiple Fronts" at the 2015 DRI Annual Meeting
- September 30, 2015, "Protecting Your Brand From Online Fraud, Infringement & Other Emerging Threats" at the Search Marketing Expo – East
- September 10, 2015, Somebody's Watching Us: Considerations for Nonprofits Operating under Increased Government Scrutiny
- August 11, 2015, "State Attorneys General Developments (July 2015)" for the ABA Antitrust Section Consumer Protection Monthly Update
- April 29, 2015, "Is Calling Puff a 'Magic' Dragon Puffing?" for an Advertising Law Symposium Hosted by Venable LLP
- February 19, 2015, "The Sports Report: Sports, Consumer Protection, and Antitrust – A Year in Review" for the American Bar Association
- June 13, 2014, “Understanding Antitrust & Competition Strategies” for The Knowledge Group (webcast)
- February 20, 2013, “Antitrust Basics For Legal Recruitment Professionals” for the Washington Area Legal Recruitment Administrators Association (WALRAA)
- February 23, 2011, “Introduction to U.S. Merger Enforcement” for the Howrey Antitrust Fundamentals Seminar
- February 25, 2009, “Sherman Act Section One” for the Howrey Antitrust Fundamentals Seminar



Atitaya Rok

Associate General Counsel, American College of Cardiology

Atitaya C. Rok is a former associate in Venable's Nonprofit Organizations and Political Law Practice Groups in Washington, D.C. Ms. Rok advises nonprofit organizations, including public charities, private foundations, trade and professional associations, and for-profit corporations on a variety of charitable fundraising matters, including charitable solicitation regulation compliance and commercial co-venture campaigns.

She also works with both nonprofit and for-profit clients in political law compliance, including registration and reporting at the federal, state and local levels, and overall legal and regulatory compliance. Ms. Rok also advises nonprofit clients on contractual, corporate governance, and general corporate matters.



Yael Fuchs

Co-Section Chief, Charities Bureau Enforcement Section,
New York State Office of the Attorney General

Yael Fuchs is the Co-Section Chief of the Enforcement Section of the Charities Bureau of the Office of the New York Attorney General. Yael conducts and oversees investigations and litigation of violations of New York laws governing not-for-profits and their agents, including breaches of fiduciary duty and fraudulent solicitation. Recent matters include settlements with three Long Island-based charities, their fundraiser, and their accountant, and a special proceeding brought against a Brooklyn-based charity and its accountant. Yael also works on special projects involving not-for-profits, including the OAG's oversight of disaster relief charities after Hurricane Sandy. Yael is also part of the Adjunct Clinical Faculty at Cardozo Law School.

Prior to joining the OAG, Yael was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison, where she focused on internal and regulatory investigations, transnational litigation, and pro bono asylum matters. She served as a foreign law clerk at the Supreme Court of Israel, where she provided comparative law advice to Justice Asher Grunis. Yael earned her J.D. from Columbia Law School, where she was a James Kent Scholar and an editor of the Columbia Human Rights Law Review. Prior to law school, Yael worked at two Washington DC-based not-for-profits.