

## TIPS

### **FILING AN EXCLUSION NOTICE UNDER SECTION 36b-61(2)(D) OF THE CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT**

The Connecticut Business Opportunity Investment Act generally requires that business opportunities offered and sold in or from Connecticut be registered with the Banking Commissioner. Section 36b-61(2) of the Act defines the term “business opportunity” to mean

the sale or lease, or offer for sale or lease, of any product, equipment, supply or service which is sold or offered for sale to the purchaser-investor for the purpose of enabling the purchaser-investor to start a business, and in which the seller represents that:

(A) The seller will provide locations or assist the purchaser-investor in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, or any other devices within the intent of sections 36b-60 to 36b-80, inclusive, as the commissioner shall by regulation or order determine, on premises neither owned nor leased by the purchaser-investor or seller; *or*

(B) the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser-investor using, in whole or in part, the supplies, services or chattels sold to the purchaser-investor; *or*

(C) the seller guarantees, either conditionally or unconditionally, that the purchaser-investor will derive income from the business opportunity, or that the seller will refund all or part of the price paid for the business opportunity or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser-investor is unsatisfied with the business opportunity; *or*

(D) the seller will provide a sales program or marketing program to the purchaser-investor.

**As you can see, a “business opportunity” exists where 1) there is an offer or sale of products or services; 2) the products or services are offered or sold to enable the purchaser to start a business; and 3) the seller makes *any* of the representations listed in the statute.**

If a seller represents that it will provide the purchaser with a sales program or marketing program, the arrangement may not necessarily be a “business opportunity” if the sale of the marketing program is made in conjunction with the licensing of a federally registered trademark or service mark. This exclusion can be found in Section 36b-61(2)(D) of the Act. The Act tells us that if the trademark or service mark was initially federally registered on and after October 1, 1996, the seller must file a copy of the trademark or service mark certificate with the Commissioner before the seller makes any offer or sale in Connecticut.

**The burden of proving the exclusion is on the filer, not the department.**

## EXCLUSION CHECKLIST



Here is a quick Checklist to help us efficiently process your trademark exclusion claim.

**You will be preparing a cover letter with attachments. There is no state form to claim the exclusion. In addition, there is no fee.**

**Step 1:** Identify the seller or franchisor of the business opportunity. Note: The seller or franchisor is the company that sells the business opportunity. You can typically find this information in Item 1 of the seller's disclosure document. Do not use the name of the trademark.

**Step 2:** Provide the following (we log this information into our computer system to keep track of your filing):

- a) The seller or franchisor's address
- b) State where the seller or franchisor was formed
- c) Date when the seller or franchisor was formed

**Step 3:** Enclose a copy of the trademark or service mark certificate **or** give us the federal registration number so we can look it up online.

**Tip:** You can check federal registration status at <http://tsdr.uspto.gov>

**Step 4:** Is the seller or franchisor the holder of the mark according to U.S. Patent and Trademark Office records?

If yes, you're done. Please see below on how and where to make your filing.

If not, we will need **one** of the following:

- a) An assignment of the registered mark from the trademark holder to the seller or franchisor (be sure the document is signed and dated); or
- b) A license agreement between the holder of the mark and the seller or franchisor giving the seller/franchisor rights to the registered mark and the ability to sublicense that mark to purchaser-investors. Be sure the license agreement is signed and dated.

**Caution:** If the purchaser is not allowed to use the registered mark, the seller cannot rely on this exclusion. To find out if the purchaser can use the mark, check the business opportunity contract (or franchise agreement) as well as Item 13 of the disclosure document.

**How to File:** You may file via e-mail to either [cynthia.antanaitis@ct.gov](mailto:cynthia.antanaitis@ct.gov) or [dob.sec-reg@ct.gov](mailto:dob.sec-reg@ct.gov) or via regular mail (State of Connecticut Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, CT 06103). In most instances, we will send you a status confirmation. Note that you do not have to renew your exclusionary claim each year if there have been no material changes. Examples of material changes include: different seller or franchisor; trademark no longer federally registered; purchaser no longer permitted to use the registered mark; seller no longer has any rights to the mark)