

Dealing With Disclosure Requirements for Franchises and Business Opportunities



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Everyone is familiar with franchises – if you have been to a McDonalds® or a Starbucks®, chances are the location is operated by a franchisee. Less familiar, at least in terms of national name recognition, are ventures classified as business opportunities.

From a high level, for payment of a franchise fee, the purchaser (“franchisee”) receives the right to use a well-established trademark, and a playbook or system for selling the goods or services associated with the trademark. In contrast, the purchaser of a business opportunity receives set equipment or a location through which it can provide certain goods or services, and while there might be a trademark associated with a business opportunity, it often has little to no value to the business opportunity.

One component that is common to both the offering of a franchise and a business opportunity is that each is highly regulated. The Federal Trade Commission (“FTC”) has promulgated separate regulations for franchises and business opportunities. In addition to the FTC regulations, many states also have their own regulations governing the offering of franchises and business opportunities.

A primary requirement of both sets of regulations, both at the federal and state level, is disclosure by the franchisor or seller of the business opportunity to the franchisee or purchaser. The regulations govern the topics that must be disclosed, as well as, the timing of such disclosures. For both franchises and business opportunities, many states require that the disclosures are submitted and approved by the state prior to offering franchises or business opportunities to a potential franchisee or purchaser.

While these disclosure requirements might seem cumbersome, for example, the FTC Franchise Rule requires 22 separate disclosure items in the franchise disclosure document, which regularly exceeds 100 pages in length, the consequences for not properly registering or disclosing, as applicable, a franchise or business opportunity can be severe. One of the most common penalties is the requirement to offer a right of rescission to any franchisee or purchaser that did not receive proper disclosure – this means the franchisee or purchaser can elect to no longer operate the franchise or business opportunity and receive from the franchisor or seller net profits earned while operating the improperly disclosed franchise or business opportunity.

If you have questions about franchising or business opportunities, please contact any of the Franchising & Licensing attorneys below.

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