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December 19, 2016

By Hand Delivery

Hon. Heidi E. Brieger
Associate Justice
Superior Court
Suffolk County Courthouse, 13th Flr.
Three Pemberton Square
Boston, MA 02108

12/19/16
RECEIVED
JUN 9. 2016
ASST. CLERK

Re: In re Civil Investigative Demand No. 2016-EPD-36,
Issued by the Office of the Attorney General
Suffolk Superior Court Civil Action No. 16-1888F

Dear Justice Brieger:

The Office of Attorney General Healey (“AGO”) writes in regard to Exxon Mobil Corporation’s (“Exxon”) December 13, 2016, submission to the Court of a redacted version of an Exxon Brand Fee Agreement, with Global Companies LLC of Waltham, Massachusetts (the “Massachusetts Franchise Agreement”), which the AGO had not previously seen. Upon review, and in response to Exxon’s characterizations in its letter, the AGO believes the Massachusetts Franchise Agreement provides further strong evidence in support of this Court’s exercise of personal jurisdiction over Exxon in this matter because, in addition to the fact that Exxon has entered into such contracts with numerous Massachusetts-based companies, the Massachusetts Franchise Agreement illustrates Exxon’s authority to govern the operations and marketing of more than 300 Exxon-branded service stations in the Commonwealth. In particular, and without limitation, we identify the following specific provisions:

- Whereas (first), Ex. 1, p. 1 (Massachusetts franchisee acknowledges Exxon’s “core values . . . to build and maintain a lasting relationship with **its customers, the motoring public,**” including to “deliver quality products that customers can trust,” “provide clean and attractive retail facilities,” and “be a responsible, environmentally-conscious neighbor”) (emphasis supplied).
- Section 2(d)(2), Ex. 1, p. 3 (Massachusetts franchisee acknowledges, and shall require its franchise dealers to acknowledge, that the operation of its business selling Exxon-related products and services impacts customers’ perceptions and acceptance of Exxon products).



- Section 2(d)(3), Ex. 1, p. 3 (Massachusetts franchisee shall operate and shall cause its franchise dealers to operate Exxon-related businesses in compliance with the Massachusetts Franchise Agreement).
- Section 2(e)(1)(i), Ex. 1, p. 4 (Massachusetts franchisee and its franchise dealers may only use or operate retail outlets if Exxon “has expressly approved the Exxon or Mobil-branding” of those outlets and business operations).
- Section 2(e)(2), Ex. 1, p. 4 (Exxon maintains “sole discretion” to approve the branding or operation of any Exxon-related business proposed by the Massachusetts franchisee or its franchise dealers, and Massachusetts franchisee shall comply and cause its franchise dealers to comply with any requirements imposed by Exxon’s approval of retail outlets).
- Section 2(e)(3), Ex. 1, pp. 4-5 (Exxon may withdraw, in its “sole judgment,” Exxon’s approval to brand any outlet or operate any business in Massachusetts, if, for example, the outlet “fails to portray the image and standards ExxonMobil expects from **its branded retail outlets**” or otherwise causes harm to the value or reputation of Exxon’s proprietary marks) (emphasis supplied).
- Section 2(f), Ex. 1, pp. 5-6 (Massachusetts Franchise Agreement does not give an exclusive territory to the Massachusetts franchisee, and Exxon “may directly or indirectly compete with the [Massachusetts franchisee]” in any territory).
- Section 4(a), Ex. 1, p. 8 (Exxon has the right in its “sole discretion” to change the grades, brands, quality, or specifications of the products covered by the Massachusetts Franchise Agreement).
- Section 6(b), Ex. 1, p. 8 (Massachusetts franchisee “shall participate” in Exxon credit card program offerings, “proprietary Mystery Shopper program,” and “Point of Purchase signage program”).
- Section 9, Ex. 1, pp. 15-16 (Exxon may issue Exxon-branded credit cards, a program that the Massachusetts franchisee must administer according to the terms of the Massachusetts Franchise Agreement).
- Section 13, Ex. 1, pp. 17-18 (“primary business purpose” of Exxon is to “optimize effective and efficient distribution and representation” of its products in the market, and Massachusetts franchisee must require outlets’ compliance with “minimum facility/product/service requirements”).
- Section 14(a), Ex. 1, p. 18 (Exxon, in its sole discretion, may provide plans, specifications, equipment, décor, and signs identified with its brand).
- Section 15(a), Ex. 1, pp. 18-19 (Massachusetts franchisee “agrees to diligently promote and cause its Franchise Dealers to diligently promote the sale of [Exxon] Products,

including through advertisements,” and “**ExxonMobil shall have the authority to review and approve, in its sole discretion, all forms of advertising and sales promotions that will use media vehicles for the promotion and sale of any product, merchandise or services . . .**” with pre-approval required for “any significant advertising campaign, sponsorship and/or promotion”) (emphasis supplied).

- Section 16, Ex. 1, p. 19 (Massachusetts franchisee agrees to “maintain the [outlets] in a manner which will foster customer acceptance and desire for the Products sold” and to provide “sufficiently qualified and neatly dressed personnel in ExxonMobil approved uniforms . . . as appropriate to render first class service to customers . . .”).
- Sections 26(c) (9) & (11), Ex. 1, p. 26 (Exxon reserves the right to terminate the Massachusetts Franchise Agreement if, among others, the Massachusetts franchisee engages in fraud or willfully misbrands Exxon’s products).
- Section 26(d), Ex. 1, p. 27 (Exxon reserves the right to terminate the Massachusetts Franchise Agreement if, following discussions and/or investigation, it determines the Massachusetts franchisee “has engaged in fraudulent, unscrupulous or unethical business practices”).
- Section 35, Ex. 1, pp. 28-29 (Exxon has the right to enter “any [branded outlets] and other places where [Massachusetts franchisees] conduct any Business to enforce ExxonMobil’s rights and remedies under this Agreement, including examining . . ., testing and sampling of all properties, tanks, containers, pumps and delivery truck tanks, and taking other action, for purposes of preserving the integrity of the Proprietary Marks, performing product quality inspections and determining . . . compliance with this Agreement If, in the sole opinion of ExxonMobil . . . [the Massachusetts franchisee] has failed to comply with its obligations . . . ExxonMobil may, at its sole option, debrand the [outlet] or cancel and terminate” the Massachusetts Franchise Agreement).

Respectfully submitted,



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cc: Fish & Richardson P.C. (by hand)
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