Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, City of Mandaluyong

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SEC Opinion No. 08-24
Advertising: Interpretation
of Purpose Clause

Sir:

This refers to your letter dated October 15, 2008 seeking clarification on whether Digichive Philippines Corporation ("Digichive"for brevity) can legally engage in the business of supplying, managing, selling and/or subleasing out to third parties, indoor and outdoor advertising materials, sites and spaces in the Philippines.

It appears that Digichive is a corporation registered under Philippine laws with SEC Company Registration No. CS200605883 dated April 10, 2006. Based on its primary purpose which we quote:

> SECOND: A. the primary purpose of this corporation is to engage in, operate and maintain an advertising, promotions and wholesale marketing business.

the corporation is an "advertising company". "Advertising" has been defined as a "purchased publicity directed according to a definite plan to influence people to act or to think as the advertiser desires." (Arthur Judgson Brewster and Herbert Hall Palmer, *Introduction to Advertising* p.8, [1924]) It has also been said that "[A]dvertising is spoken of as one of the links in a chain that connects the product and the public, or the market."(*Ibid.* p. 11). The term also signifies as " any paid form of non-personal presentation of ideas, goods or services by an identified sponsor. (Lexicon of Terms Commonly Used in Outdoor Advertising (http.//www. oaap. org. ph/glossary).

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There are numerous activities an advertising company needs to undertake to be competitive. These consist of, but not limited to, the following: to advertise either as principal or agent or both, prepare and arrange advertisement, manufacture, construct advertising devices and novelties; to erect, construct, purchase, lease or otherwise acquire, fences, billboards, sign boards, buildings and other structures suitable for advertising purposes; print, publish, bind and decorate, circulate and distribute, display cards, pictures, designs, graphics, etc.; employ or use any advertising media such as the advertisement in the air by airplanes, streamers, skywriting; by radio, television, movie houses, and other similar and dissimilar operations; and make and carry out contracts of every kind and character that may be necessary or conducive to the accomplishment of any purposes of the company.

Thus, a corporation engaged in advertising business may pursue any and all related activities covered by its purpose clause. This is in consonance with the implied corporate powers or catch- all proviso of Section 36 (11) of the Corporation Code of the Philippines:

> Sec. 36. **Corporate powers and capacity.** –Every corporation incorporated under this Code has the power and capacity:
>
> 11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

and the following interpretation of purpose clauses cited in litany of SEC Opinions[1]:

> It is well settled that a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express powers. (13 Am. Jur. Sec. 739). Only such powers as are reasonably necessary to enable corporations to carry out the express powers granted and the purposes of the creation are to be implied as are to be deemed incidental (Am. Jur. SEC. 740.) Powers merely convenient or useful are

[1] [SEC Opinion dtd. January 1999, Ms. Zenaida Cuison Maglaya, SEC Opinion dtd. November 4, 1995, Security Services Unlimited, Inc. SEC Opinion dtd. February 17, 1994, Mr. Salvador G. Martin, SEC Opinion dtd. July 29, 1986, Majalco Finance and Investment).

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not implied if they are not essential having in view the nature and object of incorporation. (Ibid. citing Planters Bank v. Sharp 6 Han (U.S.) 301 12 L. ed. 447).

Likewise the SEC Opinion on " **stretching of purpose clauses"** (Ltr. addressed to Mr. Amado J. Lansang, Jr. dtd. March 24, 1982) states:

"It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in such business. (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p. 54). As a matter of fact, it is even legal to **"stretch"** the meaning of the purpose clause to cover new and unexpected situations.

There will always be instances when doubts may arise as to whether an act may be reasonably implied from the purposes of the corporation. These doubts will sometime be due to poor draftsmanship or lack of foresight on the part of the original incorporators or their legal counsel or, as is oftentimes the case, situations or circumstances may come up which could not have been foreseen at the time of incorporation. Many times the purpose clause can be reasonably **'stretched'** as to impliedly cover these new and unexpected situations. But in those cases where it cannot, a proper amendment thereof would be necessary. (Campos and Lopez Campos, Notes and Selected Cases on Corporation Law, p. 247)."

Accordingly, your query is answered in the affirmative.

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It shall be understood, however, that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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