Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

13 September 2012
SEC Opinion No. 12-16
Re: Marketing and Sale of Discount Coupons

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Madam and Sirs:

This is in reply to your letter requesting an opinion on whether the marketing and sale of discount coupons for goods and services through the internet constitutes advertising, and is thus subject to the thirty percent (30%) maximum foreign equity limit in advertising entities as mandated by the 1987 Constitution.

It appears that:

1. Your client intends to acquire an existing domestic corporation ("corporation") engaged in the operation of a voucher platform on the internet through which new customers are acquired for selected businesses in the leisure, catering and entertainment industry;

2. The corporation displays vouchers of its merchant partners for a certain number of days in its website and sells these to end-consumers who redeem the vouchers from the relevant merchant;

3. The merchant dictates the conditions and duration of the vouchers, while the design of the voucher placement is at the corporation's discretion; and

4. The corporation sells these vouchers at the offered price, as agreed with the merchant, and remits the necessary revenue to the merchant, deducting the agreed remuneration (commission) to the corporation.

The Blackwell Encyclopedia of Management defines coupons as "x x x a sales promotion device which try to persuade buyers/customers to purchase. They may offer a discount on the first or subsequent purchase of a product/service, or they may need to be collected in order to be redeemed against a future purchase or to receive gifts or cash."[1]

Article 4(a) of Republic Act Number 7394[2] defines an advertisement as "the prepared and through any form of mass medium, subsequently applied, disseminated or circulated advertising matter." Article 4(b) of the same law defines advertising as "the business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data, or information about the attributes, features, quality or availability of consumer products, services or credit."

Coupons are deemed as a way of selectively discounting prices to the most price-sensitive customers.[3] In the case of Home Shopping Network, Inc. vs. Coupco, Inc.[4], the United States District Court, S.D., New York, stated that:

> "Coupons provide manufacturers with the benefits of a 'temporary price reduction', which will cause or allow them to move a potentially greater volume of product than they would have moved with a price cut. They 'empower' the consumer in a way that a simple sale does not and thereby create a purchasing incentive. Coupons, even when unredeemed, advertise products and their makers."

In the same case of Home Shopping Network, Inc., paperless electronic couponing – otherwise known as electronic vouchers – was considered to enhance certain of the attractive features of printout coupons while replacing the administrative costs of paper handling with the presumably lower cost of electronic data transfer.[5]

Based on the foregoing discussion, coupons, as well as electronic vouchers, for that matter, may be considered as advertisements.

Now, moving to the next issue: Does the marketing and sale of discount coupons for goods and services through the internet constitute advertising, and is thus subject to the thirty percent (30%) maximum foreign equity limit in advertising entities as mandated by the 1987 Constitution?

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[1] *The Blackwell Encyclopedic Dictionary of Marketing"*, The Blackwell Encyclopedia of Management, 2nd Edition, (United Kingdom: Blackwell Publishing Ltd., 2005), s.v. "Coupons".
[2] The Consumer Act of the Philippines. Approved 13 April 1992.
[3] Jeffrey F. Rayport and Bernard J. Jaworski, Introduction to e-commerce (Boston: McGraw-Hill Irwin MarketspaceU, 2005), 203.
[4] No. 95 CIV. 5048 (LBS). 27 February 1998.
[5] *Ibid.*

Article 4(at) of Republic Act Number 7394[6] provides:

> "'Mass media' refers to any means or methods used to convey advertising messages to the public such as television, radio, magazines, cinema, billboards, posters, streamers, hand bills, leaflets, mails and the like."

In your letter, you informed us that (1) the subject corporation is engaged in the operation of the voucher platform on the internet, and (2) it is the voucher/coupon merchant that dictates the conditions and duration of the vouchers, while the design of the voucher placement is at the corporation's discretion.

To determine the extent of foreign participation in the subject corporation, it is necessary to ascertain whether the corporation is an advertising agency or a mass media entity. Thus:

> "The function of advertising agencies is to serve as agents or counselors of advertisers by writing, preparing, or producing the commercial messages or materials by advertisers in selling their goods and services, and by selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public. Advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, i.e., newspapers, radio, television, etc., for this purpose. Advertising agencies falling within this concept are not mass media, considering that they do not operate or control any medium of communication designed to reach or influence the masses, although the activities of such agencies, by their nature, are closely related to those of mass media."
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> "However, where the advertising agency actually disseminates information, or operates, controls or otherwise engages in the business of mass media, a specific example of which is an outdoor advertising firm which sells billboard space to advertisers, then such advertising agencies would fall within the purview of the constitutional limitation."[7]

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[6] The Consumer Act of the Philippines, *supra*.
[7] SEC-Corporate Legal Department Opinion, 2 September 1988.

Thus, if the corporation is engaged in the operation of a voucher platform on the internet with the purpose of increasing the sales of a particular product or service, it, in effect, disseminates information to the general public through the internet. Hence, it may be considered as a mass media entity. Consequently, the entity must be wholly owned by Filipino citizens, in compliance with the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution[8] and List A(1) of Executive Order Number 858[9].

On the other hand, if the corporation is merely involved in the design of the voucher placement, i.e., in writing, preparing, or producing the commercial messages or materials and selecting and recommending the medium or media to be used as the vehicle for disseminating such messages to the public, it must comply with the thirty percent (30%) maximum foreign equity limit requirement of Section 11, Article XVI of the 1987 Constitution[10] and List A (16) of Executive Order Number 858[11].

Please be reminded, 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 a standing rule binding upon the Commission in other cases, whether of similar or dissimilar circumstances.

By authority of the Commission:

CAMILO S. CORREA
General Counsel

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[8] Section 11, Article XVI, 1987 Constitution. "The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens. x x x" *(Emphasis supplied).*

[9] Eighth Regular Foreign Investment Negative List. List A: Foreign Ownership is limited by mandate of the Constitution and specific laws. No foreign equity. 1. Mass media, except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 04 May 1994).

[10] Section 11, Article XVI, 1987 Constitution. "x x x Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry. x x x" *(Emphasis supplied).*

[11] Eight Regular Foreign Investment Negative List. List A: Up to Thirty Percent (30%) Foreign Equity. 16. Advertising (Art XVI, Sec. 11 of the Constitution).