



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

03 August 2011

SEC-OGC Opinion No. 11-34
Retail trade; Incidental to primary
purpose

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ATTN: Atty. Ma. Adelina S. Gatdula

Madam:

This refers to your letter dated 23 March 2011 written on behalf of your client Fitness First Philippines, Inc. ("FFPI"), requesting the confirmation by the Commission of your opinion "that the sale of drinks, sundry apparel and articles of hygiene solely within gym premises owned and/or operated by FFPI and exclusively to persons who have enrolled as gym members in order to avail of the facilities in the gym premises, is incidental to the business of FFPI and would not be considered retail trade."

The primary purpose of FFPI is:

"To provide fully integrated sports facility management services or total club management services which shall include but not limited to providing consultancy service to a diverse range of development projects like hotel health clubs, gyms, large-scale residential facilities, hotels, executive clubs and specialty sports facilities such as tennis clubs and ice rinks, providing an effective and total management service extending to all aspects of club operations like administration and finance, marketing, recreation strategy and food and beverage management, providing a complement of specialized services such as sports coaching, fitness testing, personal training, pro shops, beauty and massage treatments and food and beverage facilities, and selling (except on retail) club equipment and products like fitness equipment, tennis, squash and golf installation, sports surfaces and ancillary court products, recreational and playground equipment and sport simulation devices to governmental bodies, commercial operators and private developers."

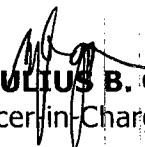
In Sec. 3(1) of the Republic Act No. 8762¹, also known as the Retail Trade Liberalization Act of 2000, the term "retail trade" is defined as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption..." Rule I, Sec. 1(b) of the Implementing Rules and Regulations (IRR) of the Act defines "consumption" as the "utilization of economic goods in the satisfaction of want resulting in immediate destruction, gradual decay or deterioration or transformation into other goods."

As you have correctly pointed out, the Commission has previously issued an opinion addressed to your Firm, that the act of "engaging in the selling of merchandise as an incident to the primary purpose of a corporation does not constitute retail trade."² This was based on an interpretation of the exception granted under Republic Act No. 1180³, and replicated in the Retail Trade Liberalization Act, that excluded "sales in restaurant operations by a hotel owner or inn-keeper irrespective of the amount of capital: *Provided*, That the restaurant is **incidental** to the hotel business xxx" from the coverage of the term "retail trade" (Emphasis supplied).

Since a gym operation, by its nature, involves transacting with gym members or guests that need to be attired properly, require hydration and rehydration, and make use of the shower facilities of the gym, the sale of the drinks, sundry apparel and hygiene articles is incidental to the primary purpose of a operating and is not itself pursued by the FFPI as an independent business. Thus, the contemplated activity is not considered retail trade.

This Opinion is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.


VESPER JULIUS B. GARCIA
Officer in Charge

¹ An Act Liberalizing the Retail Trade Business, Repealing for the Purpose Republic Act No. 1180, as Amended, and for Other Purposes (2000).

² SEC Opinion No. 11-02, 13 November 2002.

³ An Act to Regulate the Retail Business (1954).