Republic of the Philippines
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City

In the Matter of

FRAN.CON FRANCHISE MARKETING AND CONSULTANCY, INC.,

SEC Admin Case No. 01-10-111

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

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DECISION

For consideration is the Petition for Revocation of the Certificate of Incorporation of Fran.Con Franchise Marketing & Consultancy Inc. ("Francon") filed by the Enforcement and Prosecution Department ("EPD") on 20 January 2010.

FACTS OF THE CASE

Francon is a stock corporation registered with the Commission since 20 September 2001 under Company Registration No. A200114324 with the following primary purpose:

> *"To provide franchise marketing services in all the support needed in facilitating business to revitalized selling techniques. It pioneers & caters to small and medium franchise company that can assist your businesses of its franchise potential. It will provide business program and assist in requirements from planning to implementation that guaranties results in work with outmost professionalism."*

On 20 January 2010, EPD filed a Petition for Revocation of Francon's Certificate of Incorporation on the ground of "[s]erious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general

public."[1] EPD alleges that Francon has been "acting as a franchisor" although its primary purpose is only to provide franchise marketing services to franchisees.

Attached to EPD's Petition are several complaints by the alleged victims of Francon, all of which are describing a similar *modus operandi* by which Francon lures its victims into paying franchise fees.

The said *modus operandi* is conducted as follows: first, Francon will entice its client, through advertising or "sales talk", to franchise from it a food stall or food cart business with a promise of a guaranteed projected income, marketing support and site assistance, and an assurance that the location of the business will be on a popular mall. Second, the client is asked to make a deposit as a reservation fee for the area where the food stall or food cart will be located. Afterwards, the client will be encouraged to pay, as soon as possible, the full amount of the franchise fee, ranging from about Php 40,000.00 to about Php 400,000.00, with an admonition that delaying payment might lead to a possible loss of business opportunity. With Francon's persuasion, a client will then pay the franchise fee without knowing that once it is already paid in full, Francon will default on the promises and representations it made.

Among the dilemmas faced by the clients are as follows: no marketing support and no site assistance, the equipment and supplies are not included in the franchise fee contrary to what was promised, and the business is adjacent to another franchisee offering the same product or is not located in a strategic location. Moreover, any complaint or claim for refund of the franchise fee by the clients will just be ignored.

Thus, acting on EPD's Petition for Revocation and giving Francon an opportunity to present its side, a Summons dated 28 January 2010 was issued and received by Francon on 03 February 2010, directing it to enter its appearance and file its answer within the prescribed period. However, Francon simply ignored the same and to date, it has not filed an answer. Thus, Francon is considered as "in default" pursuant to Section 3-12 of the 2006 Rules of Procedure of the Commission which reads:

> ***"Sec. 3-12. Effect of Failure to Answer.*** *– If the respondent fails to answer the complaint within the abovestated period,* ***he shall be considered as in default.*** *The Hearing Panel or Officer shall, motu proprio, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit ex parte additional evidence."* (emphasis supplied)

[1] Section 6(l)(2) of Presidential Decree 902-A, as amended.

ISSUE

The sole issue in the present appeal is whether the Commission should revoke Francon's Certificate of Incorporation based on EPD's Petition and submitted evidence.

RULING

The answer is in the AFFIRMATIVE.

Section 6(l)(2) of Presidential Decree 902-A, as amended, reads:

> *"Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:*
>
> *xxx xxx xxx*
>
> *l)To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:*
>
> *xxx xxx xxx*
>
> *2.* ***Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;"*** (emphasis supplied)

Once a corporation has been granted juridical personality by the State, it is allowed and can legally exercise only such powers granted by the law for its creation[2] and those enumerated in its charter.[3] As regards the latter, the same can be found in the purpose clause of the Articles of Incorporation which confers and limits the powers that a corporation may exercise.[4]

In the present case, the purpose clause of Francon's Articles of Incorporation basically states that its primary purpose is to "provide franchise marketing services", "provide business program and assist in requirements from planning to implementation." Its charter does not provide that it can act as a franchisor of a food stall or a food cart business.

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[2] CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 20 (2001 ed.).
[3] *Id.*, at 232.
[4] *Id.*, at 197.

Nonetheless, based on the evidence attached to EPD's Petition, Francon apparently acted as a franchisor. Numerous contracts[5] show that Francon, thru its Vice-President for Marketing and Finance, Aireen C. Trinio, entered into franchising agreements with its clients whereby it awarded franchise rights over several food stall or food cart business as consideration for the payment of a franchise fee. The pertinent provisions of the said contracts, which patently shows that Francon acted as a franchisor, read as follows:

"*xxx xxx xxx*

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have agreed to strictly comply with the following terms and conditions, to wit;

1. *The* ***FIRST PARTY*** ***hereby awards the Franchise Rights to*** ***the SECOND PARTY*** *commencing on the signing thereof.*
2. ***Franchise Fee – The Franchise Fee shall be*** _____ *THOUSAND PESOS (Php_____) for* ***the establishment and operation of one (1) Franchise outlet****. Further, Franchise Fee shall form and part of Business Consultation effective from signing of this contract. FRANCHISE FEE IS NON-REFUNDABLE.*

xxx xxx xxx" (emphasis supplied)

Moreover, there are other franchise agreements[6] which were also entered into by the same, Aireen C. Trinio, though in the name of other franchisors. Although Francon's name does not appear in the said agreements, Francon's involvement cannot be disputed considering that several receipts[7] were issued by and under the name of Francon pursuant to the said agreements. This only means

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[5] EPD's Petition, Annex Q – Contract with Emmanuel R. Monreal.
Annex Q-1 – Contract with Zaldy and Ethelyn Sablayan.
Annex Q-2 – Contract with Blenda D. Tabones and Deborah Q. Chua.
Annex Q-3 – Contract with Rea A. Landicho.
Annex Q-4 – Contract with Ma. Socorro and Benilda Laboc.
Annex Q-5 – Contract with Abigail T. Espinola.
Annex Q-6 – Contract with Zosimo and Nenita Deveza.
Annex Q-7 – Contract with Benhur and Julie Nadulpit.
Annex Q-8 – Contract with Joey and Janith Nagrampa.
Annex Q-9 – Contract with Gloria Bacud.

[6] *Id.*, Annex F – Contract between Oscar Delicious Squidballs, represented by Aireen C. Trinio, and Carlo and Ma. Cristina Irasusta.
Annex I – Contract between Oscar Delicious Squidballs, represented by Aireen C. Trinio, and Luzviminda C. Marelino.
Annex O – Contract between Dahon Saging Foods, represented by Aireen C. Trinio and Vladimir and Roselle Yumang.

[7] *Id.*, Annexes E, G, H, N and N-1.

that Francon is also using conduits to hide the fact that it is engaging in franchising activities.

Hence, the foregoing pieces of evidence undoubtedly prove that Francon indeed performed acts in excess of its primary purpose. Furthermore, considering the nature of Francon's misrepresentation and the number of clients who were misled, the same amounts to serious misrepresentation to the great prejudice of or damage to the general public .

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED.** The Certificate of Incorporation of Fran.Con Franchise Marketing & Consultancy Inc. is hereby **REVOKED** on the ground provided under Section 6(l)(2) of Presidential Decree 902-A, as amended. Let the Company Registration and Monitoring Department be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, 13 May 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner