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

In the matter of:

CAREBEST INTERNATIONAL, INC.

SEC Admin. Case No. 03-10-306

For: Revocation of Corporate Registration

EVELYN S. DE LEON,

Petitioner.

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ORDER

This refers to the Petition for Cancellation of Certificate of Registration of Carebest International, Inc., filed on 31 March 2010.

On 22 May 2008, the Commission *En Banc* revoked the Certificate of Registration of Care Best International, Inc. under SEC Registration No. A199913047. This revocation order is now the subject of a pending petition for review, docketed as CA-GR SP 104364, with the Court of Appeals. Meanwhile, the incorporators of the revoked corporation, including Reynaldo Cuevas and Ma. Luz Sustituedo, incorporated and registered another corporation namely, Carebest International, Inc., on 16 March 2006 under SEC Registration No. CS200603870. The respective Articles of Incorporation of both corporations reveal an identical primary purpose, namely:

> "To establish, own, manage, operate and carry on the business of maintaining, preserving, preparing cleaning buildings, amusement or recreational places or centers, office premises, factories, janitorial services, gardening, landscaping, installation, repair and maintenance of office equipment, window cleaning, pest control on any kind of building electric appliances and other miscellaneous repairs and services."

Petitioner alleges that Carebest International, Inc. did not actually organize or commence its operations since it was just incorporated and registered in anticipation of the possible finality of the 22 May 2008 Revocation Order against Care Best

International, Inc. Thus, petitioner concludes that Carebest International, Inc. should be revoked, or at least be deemed dissolved in accordance with Section 22 of the Corporation Code,[1] which provides:

> "Sec. 22. Effects on non-use of corporate charter and continuous inoperation of a corporation. - If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved. However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation.
>
> This provision shall not apply if the failure to organize, commence the transaction of its businesses or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission."

At the outset, we find that it is in the public's interest for Carebest International, Inc. to change its corporate name since it is confusingly similar with the previously registered corporate name of the Care Best International, Inc.

Section 18 of the Corporation Code, provides:

> "Sec. 18. *Corporate name.* - No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name."

The policy behind Section 18 of the Corporation Code was explained in the case of *Lyceum of the Philippines v. Court of Appeals, et al.,*[2] in this wise:

> "The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the

[1] Batas Pambansa Blg. 68 (01 May 1980).
[2] G.R No. 101897, 05 March 1993.

> reduction of difficulties of administration and supervision over corporations."

The fact that the Commission previously approved the registration of a corporate name despite the prior registration of an identical name, does not prevent the Commission from ordering the change of name. Estoppel does not operate against the state or its agents.[3] It is the Commission's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved, but more so for the protection of the public, and it has authority to de-register **at all times and under all circumstances** corporate names, which in its estimation, are likely to generate confusion.[4]

In the present case, the corporate names of Carebest International, Inc. and Care Best International, Inc. are nearly identical. The only difference between the two corporate names is that while one makes use of two separate words CARE BEST, the other combines the two words into a single coined word CAREBEST. Obviously, the corporate names of the two entities are confusingly similar. Further, the fact that the two corporations were incorporated by the same individuals and engage in the same line of business increases the likelihood of confusion. Any person using ordinary care and discrimination would be misled into believing that the two corporations are but one and the same.

Thus, Carebest International, Inc., being the later registrant, must change its corporate name since allowing it to retain its present corporate name will facilitate fraud upon the public which would have occasion to deal with the corporations concerned, ease the evasion of legal obligations and duties, and increase the government's difficulties in the administration and supervision over corporations. For these reasons, the Commission is duty bound to order Carebest International, Inc. to change its corporate name.

Now regarding the main issue of whether Carebest International, Inc.'s corporate registration should be revoked for non use of charter or continuous inoperation, we deem it proper to remand this matter to the Company Monitoring and Registration Department ("CRMD," for brevity) for their appropriate action.

Under SEC Resolution No. 235, series of 2002, we mandated that cases for cancellation of the corporate franchises based on continuous inoperation should be handled by the CRMD:

> "RESOLVED, That the CED shall handle cases for cancellation of the franchises or Certificates of Registration of

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[3] *Manila Lodge No. 761 v. Court of Appeals*, No. L-41001, September 30, 1976, 73 SCRA 166.
[4] *Ang Kaanib sa Iglesia ng Dios kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. vs. Iglesia ng Dios kay Cristo Jesus, Haligi at Suhay ng Katotohanan*, G.R. No. 137592, December 12, 2001.

> corporations, partnerships and associations on the following grounds:
> 1) Fraud in processing its Certificate of Incorporation;
> 2) Serious misrepresentations as to what the corporation can do or is doing to the great prejudice of or damage to the general public
> 3) Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise."
>
> While the CRMD shall handle said cases based on the following grounds:
> 1) **Continuous inoperation for a period of at least five (5) years**
> 2) Failure to file by-laws within the required period
> 3) Failure to file the required reports in appropriate forms as determined by the Commission within the prescribed period."

The rationale for this resolution is that it is the CRMD that has the technical expertise and specialized knowledge necessary in determining the existence of facts relevant to the alleged non use of charter or continuous in-operation of Carebest International, Inc.

WHEREFORE, premises considered, Respondent CAREBEST INTERNATIONAL, INC., with SEC Registration No. CS200603870, is hereby **ORDERED** to change its corporate name by amending its articles of incorporation within thirty (30) days from the date of receipt of this Order.

Respondent is required to submit proof of its compliance within the same period. Failure to comply with this Order will automatically subject the respondent to an administrative fine of Thirty Thousand Pesos (P 30,000.00) pursuant to the Commission's authority to impose administrative sanctions as provided in the Securities Regulation Code[5], Section 54. This is without prejudice to any additional penalties that may be imposed for continued non-compliance.

Further, this case is hereby **REMANDED** to the Company Registration and Monitoring Department for further proceedings in order to determine if factual basis exists for the revocation of respondent's certificate of registration on the ground of non use of charter or continuous in-operation.

Let a copy of this Order be furnished the Company Registration and Monitoring Department for proper notation and action.

SO ORDERED.

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[5] *Republic Act no. 8799 (19 July 2000).*

Mandaluyong City, 17 June 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO *
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on leave