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

KABALIKAT CIVICOM ASSN., INC.
Petitioner-Appellee,

-versus-

KABALIKAT CIVIC COMMUNICATORS NETWORK OF BICOL, INC.
Respondent-Appellant.
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SEC EB CASE NO. 04-10-199
(SEC CASE NO. 02-09-260)
For: Change of Name

DECISION

For consideration of the Commission *En Banc* is the appeal filed by KABALIKAT CIVIC COMMUNICATORS NETWORK OF BICOL, INC. ("respondent-appellant") praying that the Order of the Office of the General Counsel of the Commission ("SEC-OGC") dated 11 March 2010 (the "Order") in favor of KABALIKAT CIVICOM ASSN., INC. ("petitioner-appellee") which directed respondent-appellant to change or modify its corporate name, be reversed and set aside.

FACTS OF THE CASE

Respondent-appellant was registered on 18 May 2006 under SEC Registration No. CN 200626769, while petitioner-appellee was registered on 28 January 1994 under SEC Registration No. ANO94000339, or, twelve years and approximately four months ahead of respondent-appellant. On 3 November 2003, petitioner-appellee's Certificate of Registration was revoked for non-compliance with the Commission's reportorial requirements, pursuant to the Order of Revocation dated 30 September 2003. On 31 July 2007 however, said Order of Revocation was set aside by the Commission.[1]

On 12 February 2009, petitioner-appellee filed a Petition with the Commission, to change the corporate name of respondent-appellant, which was granted.

Hence, this appeal.

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[1] Order dated 31 July 2007, SEC *En Banc* Case No. 07-07-0108.

ISSUE

Whether the 11 March 2010 Order of the SEC-OGC ordering respondent-appellant to change or modify its name should be reversed and set aside.

RULING

Before the merits of the case are tackled, the procedural issues raised by both parties must be addressed.

Counsel of petitioner-appellee believes that the Appeal Memorandum filed by the respondent-appellant is in the nature of a motion for reconsideration and bereft of merit having been filed without the mandatory affidavit of merit required by Rule 37 of the Rules of Court.[2] On the other hand, Counsel of respondent - appellant correctly raised the fact that the 2006 Rules of Procedure of the Commission ("2006 Rules"), and not the Rules of Court, applies.

A strict application of the 2006 Rules to the instant appeal merits an outright dismissal, based on Sec.11-6 which provides: "Dismissal of Appeal for Non-Compliance. — The appeal may be dismissed by the Commission En Banc for failure to comply with these Rules, or failure to perfect the appeal within the prescribed period." Respondent-appellant failed to perfect the appeal within the prescribed period of fifteen (15) days. Respondent –appellant received the Order on 24 March 2010, thus the fifteenth (15th) day is 8 April 2010 for purposes of serving the Notice of Appeal and the Memorandum on Appeal upon the adverse party *and* filing it with the Commission *En Banc*. While the registry receipts for the petitioner-appellee and the Commission are dated 8 April 2010, the docket fee was paid on 12 April 2010,[3] *four days after the prescribed fifteen day period. Thus, respondent appellant failed to comply with the requirements of Sec. 11-3 of the 2006 Rules on perfection of appeal* [4] *which is a basis for dismissal under Sec.11-6 of the 2006 Rules.*

However, in the interest of justice and based on the principle of substantive due process, we shall give this petition due course, inasmuch as there was partial compliance with the 2006 Rules. Moreover, as stated in *White Light Corporation et. al. vs. City Of Manila,*[5] "The due process[6] guaranty serves as a protection against arbitrary

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[2] Comments/Opposition to Appeal Memorandum for the Respondent filed 11 May 2010, par. 2.
[3] Official Receipt No. 0407631
[4] SECTION 11-3.Perfection of Appeal. — The appeal shall be deemed perfected upon the filing of the Memorandum on Appeal and payment of the required docket fee within the period provided for in these Rules.
[5] G.R. No. 122846 January 20, 2009.

regulation xxx. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned."

Having settled the procedural issue, we now tackle the merits.

The Order settled the issue of confusing similarity based on Section 18 of the Corporation Code.

> "SECTION 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."

It also applied SEC Memorandum Circular No. 14-00,[7] paragraph 3 which provides, "If the proposed name is similar to the name of a registered firm, *the proposed name must contain at least one distinctive word* different from the name of the company already registered." (Emphasis supplied)

It is well settled that to fall within the protective mantle of Section 18 of the Corporation Code, two requisites must be proven:1) that the complainant corporation acquired a *prior right* over the use of such corporate name; and 2) the proposed name is either: (a) identical or (b) *deceptively or confusingly similar* to that of any existing corporation or to any other name already protected by law; or (c) *patently deceptive, confusing* or contrary to existing law.[8] (Emphasis supplied)

On the first requisite of prior right, it is indisputable that petitioner-appellee acquired a *prior right* over the use of the corporate name, KABALIKAT CIVICOM ASSN., INC. for it was registered twelve years and four months ahead of respondent-appellant, KABALIKAT CIVIC COMMUNICATORS NETWORK OF BICOL, INC. Also, the petitioner-appellee is authorized by its charter to have networks or chapters nationwide, one of

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[6] No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1987 Constitution Art 3, Sec. 1).
[7] October 24, 2000, the governing rule at the time it was incorporated.
[8] Philips Export B.V., Philips Electrical Lamps, Inc. and Philips Industrial Development, Inc., vs. Court Of Appeals, Securities & Exchange Commission and Standard Philips Corporation, [G.R. No. 96161] February 21, 1992.].

which is Region V or the Bicol Region. In fact, one of the petitioner-appellee's representatives who filed the case on its behalf is its Regional Director Rodrigo Vicaldo, who affirmed that petitioner-appellee has been operating in the Bicol Region for more than a decade prior to the filing of the complaint, which was not effectively denied by respondent-appellant. [10]

On the second requirement of confusing similarity, jurisprudence states that in determining the existence of confusing similarity in corporate names, the *test is whether the similarity is such as to mislead a person using ordinary care and discrimination*. In so doing, one must look into the record as well as the names themselves.[11]It is also well-settled that *even without such proof of actual confusion* between the two corporate names, jurisprudence states that *it suffices that confusion is probable or likely to occur.*[12] (Emphasis supplied).

The Order compared the respondent-appellant's name, KABALIKAT CIVIC COMMUNICATORS NETWORK OF BICOL, INC. with petitioner-appellee's name, and found that respondent-appellant's name *does not contain distinctive words* that differentiate it from KABALIKAT CIVICOM ASSN., INC. Thus, to the person using ordinary care and discretion, "Civic Communicators" when used alongside petitioner-appellee's name, appears like a mere deconstruction of the term "Civicom," and cannot serve as an effective differentiating medium. Neither can the phrase "Network of Bicol," function as an effective differentiating medium inasmuch as petitioner-appellee is authorized by its charter to have networks or chapters nationwide, one of which is Region V or the Bicol Region, discussed above.[13] Respondent-appellant likewise admitted in its Appeal Memorandum that it uses "KABALIKAT CIVICOM" in the pursuit of its activities or any communications."[14] The foregoing discussion leads to the conclusion that the name of respondent-appellee is, indeed confusingly similar to that of petitioner-appellant.

Additionally, the Order cited the fact that the two organizations have similar purposes, as stated in their respective Articles of Incorporation.[15] Succinctly, both civic

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[10] Order dated 11 March 2010, p. 5.

[11] Red Line Transportation Co. vs. Rural Transit Co., September 6, 1934, 60 Phil 549 cited in Philips Export B.V.; Philips Electrical Lamps, Inc. and Philips Industrial Development, Inc., petitioners, vs. Court Of Appeals, Securities & Exchange Commission and Standard Philips Corporation, respondents. [G.R. No. 96161.] February 21, 1992],citing Ohio Nat. Life Ins. Co. v. Ohio Life Ins. Co., 210 NE 2d 298.

[12] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, *et al.* G.R. No. 122174 October 3, 2002. citing Philips Export B.V. vs. Court of Appeals, 206 SCRA 464, citing 6 Fletcher [Perm Ed], pp. 107-108.

[13] Order dated 11 March 2010, pp. 4-5.

[14] That is why, in its original petition, petitioner-appellee prayed that respondent- appellant cease and desist from using "Kabalikat Civicom" Appeal Memorandum, par. 3.

[15] Id., p. 6.

organizations render public assistance through the use of radio communications,[16] which could easily give rise to confusion. It cannot be ignored that the likelihood of confusion arising from the similarity of the names of the parties herein is most likely to arise because the incorporators of respondent-appellant were former members of petitioner-appellee.[17]

A glaring example of the fact that the names of the parties herein are *deceptively or confusingly similar,* is that both parties claim that they won the Kalasag Award given by the Philippine National Police ("PNP") to outstanding civic organizations who have been a partner of the PNP in its service to the community. According to petitioner-appellee, this award was given to their organization, but was claimed by respondent-appellant's President. The petitioner- appellee alleged that it was disclosed to them later, that the award was given not knowing that there are two claimants of the name "Kabalikat Civicom."[18] On the other hand, respondent-appellant alleged that there was no confusion and that they deserved the award.[19]

As enunciated in *Philips Export B.V. Court of Appeals*[20] the subsequent appropriator of the name or one confusingly similar thereto such as the respondent-appellant herein, usually seeks an unfair advantage, a free ride on another's goodwill.[21]

The Order clarified that SEC Memorandum Circular No. 14-00 paragraph 3[22] applies only if the word used or registered as part of a corporate name is a generic or common name. It does not apply if the word is a valid trademark or trade name of another person or entity, or is a dominant word or feature of a previously used or registered corporate name.[23]

In its Appeal Memorandum, respondent-appellant basically reiterated its position that "Kabalikat" is a generic term incapable of appropriation. It likewise made a sweeping statement that "All the cases cited are not applicable to the case at bar." [24]

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[16] Reply Memorandum for the Petioner- Appellee dated 29 May 2010 par.5 p.3.
[17] Order dated 11 March 2010, pp. 5-6.
[18] Comments/Opposition (to Appeal Memorandum for Respondent dated April 29, 2010 par. 6 and Reply Memorandum for the Petitioner-Appellee dated 29 May 2010 par. 7.
[19] Reply dated 12 May 2010 par. 10.
[20] G. R. No. 96161, 21 February 1992; 206 SCRA 465-466.
[21] *Id.,* Philips Export, citing American Gold Star Mothers, Inc. v. National Gold Star Mothers, Inc., *et al.*, 89 App DC 269, 191 F 2d 488.
[22] Which provides, "If the proposed name is similar to the name of a registered firm, *the proposed name must contain at least one distinctive word* different from the name of the company already registered."
[23] Citing R. Agpalo, The Law on Trademark, Infringement and Unfair Competition 110 (2000) citing Lyceum of the Philippines, Inc. vs. CA 219 SCRA and Philips Export B.V. vs. CA 206 SCRA 458.
[24] See Assignment of errors and par. 35.

However, adhering to landmark cases on the subject, the Order fittingly resolved that it is *not generic*. That is, those which constitute "the *common descriptive name of an article or substance,*" or comprise the "genus of which the particular product is a species," or are "*commonly used as the name or description of a kind of goods.*" [25] (Emphasis supplied).The Order articulated that it is not generic for it does not particularly refer to the basic nature of the services provided by petitioner-appellee. Unlike the case of *Lyceum vs. Court of Appeals* [26] where "Lyceum" was shown to be clearly descriptive of the very being of an educational institution, the term "Kabalikat," is under the circumstances, not generic and descriptive of the petitioner-appellee.[27] Indeed, "Kabalikat" does not readily convey the fact that petitioner-appellee is engaged in public assistance through the use of radio communications. The Order is right in stating that "xxx it merely gives a hint, and requires imagination, thought and perception to reach a conclusion as to the nature of such services." [28]

To bolster its position, respondent-appellant attached a copy of the Commission's Administration Portal[29] showing the name of several corporations using the word "Kabalikat."[30] Indeed, "Kabalikat" is used by several other corporations, but they are in other lines of business, such as Kabalikat Agri-Aqua Livelihood Asociation, Kabalikat Garments, and Kabalikat Gun Club Inc. which are hardly *deceptively or confusingly similar* with that of petitioner-appellee.

According to petitioner-appellee, it has not filed any opposition or petition against any of those other organizations using "Kabalikat" or "Kabalikat Civicom" because: First, some of them were able to register by virtue of a certification of no opposition or an express permission from the petitioner-appellee, inasmuch as they are accredited chapters or branches of petitioner-appellee. This satisfies the requisite of SEC Memorandum Circular No. 14-00, paragraph 10 which provides:

> "The name which contains a word identical to a word in a registered name shall not be allowed if such word is coined or already appropriated by a registered firm, regardless of the number of the different words in the proposed name, *unless there is consent from the registered firm or this firm is one of the stockholders or partners of the entity to be registered.*" (Emphasis supplied)

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[25] *Societe Des Produits Nestle, S.A.* and Nestle Philippines, Inc. vs. Court of Appeals and CFC Corporation G.R. No. 112012, April 4, 2001 Citing Federal Unfair Competition: Lanham Act § 43(a), p. 3-22.1.
[26] G.R. No. 101897. March 5, 1993.
[27] Order dated 11 March 2010 p. 4.
[28] Id., p.4.
[29] Accessed 9 June 2009.
[30] Appeal Memorandum for the Respondent – appellant Annex "2."

Second, other organizations listed with the word "Kabalikat" are engaged in business other than that of petitioner-appellee's which is civic work using radio communications. Third, others have not been cited in the original petition because petitioner-appellee may not have heard of their existence or has not yet been a victim of confusion with such entity.[31]

Reliance of respondent-appellant on the case of *Columbia Mill Co. vs. Alcom* (sic)[32] 150 US 460 in claiming that "Kabalikat" is generic and incapable of appropriation, is misplaced since the case refers to the appropriation of "Columbia" a geographic name,[33] unlike "Kabalikat" which is not. In fact, the case strengthens the position of the petitioner-appellee for it affirms the principle that the exclusive right to the use of a trademark is founded on the priority of appropriation.[34] The principles of trademark law are adopted in resolving the case at bar inasmuch as the application of trademark has been extended to corporate names. The right to use a corporate name to the exclusion of all others is based upon the same principle, which underlies the right to use a particular trademark or trade name.[35]

WHEREFORE, premises considered, the Order of the SEC-OGC dated 11 March 2010 in SEC Case No. 02-09-260 directing KABALIKAT CIVIC COMMUNICATORS NETWORK OF BICOL, INC. to change or modify its name is hereby **AFFIRMED**, and the present appeal is hereby **DENIED**.

SO ORDERED.

Mandaluyong City, 15 July 2010.

FE B. BARIN*
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

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[31] Comments/Opposition dated 29 April 2010 par.4.
[32] Should be, Columbia Mill Co. vs. Alcorn 150 US 460 (1893).
[33] "xxx the word "Columbia" is not subject of exclusive appropriation, under the general rule that the word or words, in common use as designating a locality, or section of a country, cannot be appropriated by any one as his exclusive trademark." Id., par.9.
[34] *Id.*, see paragraphs 5 & 6.
[35] Hector S. De Leon & Hector M. De Leon, Jr. Corporation Code of the Philippines Annotated pp.184-185. (9th ed. 2006).

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on official business