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

In the Matter of:

SCANBEL PRIME CORPORATION,
Appellant,

- versus -

SEC *En Banc* Case No. 05-12-257
(SEC Case No. 08-11-351)
FOR: Change of Corporate Name

TAN SHE LING,
Appellee.
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DECISION

For consideration of the Commission *En Banc* is the *Memorandum of Appeal* (Appeal) filed by the Appellant on 16 May 2012 assailing the *Order* of the Office of the General Counsel (OGC) dated 20 April 2012, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. Respondent-corporation is hereby **DIRECTED TO CHANGE OR MODIFY** its corporate name by deleting the word 'Scanbel' within thirty (30) days from receipt of this Order."

Appellee **TAN SHE LING** (Tan) is a stockholder of **SCAN-BEL TRADING PHILIPPINES, INC.** (Scan-bel Trading).[1] Scan-bel Trading was registered with the Commission on 15 April 1988.[2] Its primary purpose is to "engage, in conduct, and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as maybe permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products, whether natural or artificial."[3]

Appellant **SCANBEL PRIME CORPORATION** (Scanbel Prime) was registered with the Commission on 8 February 2008.[4] Its primary purpose is "to engage in the business of trading of goods such as freezer/chiller on wholesale/retail basis."[5]

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[1] Petition dated 26 July 2011, p. 1.
[2] SEC Registration No. 150270.
[3] Second Article of the Articles of Incorporation of Scan-bel Trading.
[4] SEC Registration No. CS20081934.
[5] Second Article of the Articles of Incorporation of Scanbel Prime.

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Records show that Scan-bel Trading was started primarily by Tan and Ignacio Lee as a business enterprise engaged in selling freezers. The operations of the business had been running smoothly until 2008 when the relationship between Tan and Ignacio Lee deteriorated. However, Scan-bel Trading was not dissolved and Scanbel Prime was incorporated on 8 February 2008 with Ignacio Lee as one of the incorporators and directors of the latter corporation.[6]

As a result, Tan filed a *Petition* dated 24 July 2011 before the OGC praying that the appellant be ordered to change its corporate name to a new one which is not deceptively or confusingly similar to Scan-bel Trading. The OGC directed, in its Order dated 20 April 2012, the appellant to change or modify its corporate name by deleting the word "Scanbel".

Hence, the instant appeal.

The appellant claims that the General Counsel committed grave abuse of discretion: (1) in giving undue importance to the lack of verification of the appellant's Answer and (2) in ignoring the settlement reached by the parties.

The Supreme Court, in the case of *Ganaden v. Honorable Office of the Ombudsman*, defined grave abuse of discretion. The Court stated the following:

> "By '**grave abuse of discretion**' is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law."[7] (Emphasis ours)

Sec. 3.4 of the 2006 Rules of Procedure of the Commission (Rules) explicitly provides that the Answer shall be verified and verification which lacks the proper form of verification shall be considered as improper and may be expunged. In the case at bar, the appellant filed an unverified *Answer*[8] and it was expunged from the records pursuant to Sec. 3.4 of the Rules. It must be noted that the appellant attempted to correct this deficiency by belatedly filing an *Amended Answer* with the Verification/Certification after the appellee filed its *Reply* in response to the unverified Answer. Amendments of pleadings may be filed as a matter of right before a responsive pleading is served;[9]

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[6] Petition, p.2-3.

[7] G.R. Nos. 169359-61, 1 June 2011, citing *Cabrera v. Lapid*, G.R. No. 129098, 6 December 2006, 510 SCRA 55, 66.

[8] Dated 15 August 2011.

[9] Rule 10, Sec. 2 of the Rules of Court provides that a party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days right after it is served.

otherwise a motion for its admission must be filed.[10] The *Amended Answer* cannot be considered because it was filed after the appellee filed its *Reply* and the appellant did not file any motion for the admission of its *Amended Answer*. Clearly, the General Counsel did not commit grave abuse of discretion in not considering the unverified *Answer*.

Likewise, the General Counsel did not commit grave abuse of discretion in not considering the alleged settlement reached by the parties. The settlement between the parties was for the dissolution of Scan-bel Trading and to split its assets and inventory between them. However, the settlement did not mention any consent by the board of directors of Scan-bel Trading to the use of the word "Scanbel" as required by the Guidelines and Procedures on the Use of Corporate and Partnership Names (Guidelines).[11] At any rate, the appellant did not provide any proof of the alleged settlement between the parties.

Lastly, the appellant claims that confusing similarity is out of the question since the appellee cannot show that Scan-bel Trading is actively engaged in the business of trading freezers or chilling equipment. The appellant further claims that its clients are its own clients and not those of the appellee and that Scanbel was so used because Ignacio Lee had long been doing business with **Scan**dinavia and **Bel**gium, hence **SCANBEL**. The appellant also claims that Scanbel Prime is a separate entity from Scan-bel Trading since there was agreement to dissolve the former.

Section 18 of the Corporation Code[12] provides that no corporate name may be allowed by the Commission if the proposed name is identical, or deceptively or confusingly similar to that of any existing corporation. Two requisites must be proven, to wit: (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. The

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[10] Rule 10, Sec. 3 of the Rules of Court provides that, except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

[11] The Guidelines provides the following:

"3.a) The name shall not identical, misleading or confusingly similar to a corporate or partnership name registered with the Commission or with the Department of Trade and Industry, in case of a sole proprietorships;

b) If the name applied for is similar to that of a registered corporation or partnership, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name;

c) Punctuation marks, spaces, signs, symbols and other similar characters, regardless of their form or arrangement, shall not be acceptable as distinguishing words for purposes of differentiating a proposed name from a registered name. xxx"

[12] Batas Pambansa Bilang 68 (1980).

right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption.[13]

In the instant case, the General Counsel correctly ruled that Scan-bel Trading has acquired a prior right to that of the appellant over the use of the word "Scan-bel" as part of its corporate name. It has already been established that Scan-bel Trading has been using the word "Scan-bel" as part of its corporate name since its registration with the Commission on 15 April 1988, which is twenty years earlier than when the appellant was registered.[14] Thus, the first element is present.

As to the second element, 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.[15] It is now settled that proof of actual confusion need not be shown and it suffices that confusion is probably or likely to occur.[16] In this case, the names of both Scan-bel Trading and Scanbel Prime will create confusion in the mind of the public since they are engaged in the same business of trading freezer and chiller equipment. Moreover, both corporations have the same principal office and a majority of the incorporators of the appellant are also the incorporators and stockholders of Scan-bel Trading. There is no showing that Scan-bel Trading has been formally and officially dissolved in accordance with the law despite an allegation by the appellant that there was an agreement to dissolve it. Thus, there is great likelihood that confusion would arise as to the identity and the products of these two corporations and the public may be confused or misled into believing that both corporations are either the same or at least associated with one another.

Lastly, the Guidelines provides that if the name applied for is similar to that of a registered corporation, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name. However, the addition will not be allowed if the registered name is coined or unique unless the board of directors of the subject corporation gives its consent to the applied name. The Guidelines also provides that punctuation marks, signs, symbols and other similar characters shall not be acceptable as distinguishing words for purposes of differentiating a proposed name from a registered name.[17]

In this case, the name "Scan-bel Trading" is a coined or unique name and the appellant failed to allege and prove that the Board of Directors of Scan-bel Trading consented to the use of the name, as above-stated. Moreover, the omission of the hyphen in Scanbel Prime does not sufficiently negate the confusing similarity nor does it reduce confusion among purchasers. The Guidelines clearly provide that punctuation marks

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[13] *Industrial Refactories Corporation of the Philippines v. Court of Appeals, et al.*, G.R. No. 122174, 3 October 2002, citing *Philips Export B.V., et al. v. Court of Appeals, et al.*, G.R. No. 96161, 21 February 1992.
[14] Order, p. 4.
[15] *Industrial Refactories Corporation of the Philippines v. Court of Appeals, et al.*
[16] *Philips Export B.V.*, et al. v. Court of Appeals, G.R. No. 46161, February 21, 1992.
[17] SEC Memorandum Circular, No. 5, series of 2008.

marks such as a hyphen do not differentiate a similar name from a registered name. Finally, the addition of the words "Prime" and "Corporation" to appellant's name did not make it distinctive and did not differentiate it from Scan-bel Trading's name as correctly pointed out by the the General Counsel. Thus, appellant's corporate name of "Scanbel Prime" is confusingly and deceptively similar to "Scan-bel Trading" which is a registered corporate name.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Appellant Scanbel Prime Corporation is hereby **DIRECTED TO CHANGE OR MODIFY** its corporate name by deleting the word "Scanbel" within thirty (30) days from receipt of this Order.

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

SO ORDERED.

Mandaluyong City, 20 June 2013**

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA F. IBE
Commissioner

*On Official Travel

**approved during the En Banc Meeting on 21 June 2013

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