Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:
Reservation of the Corporate Name,
Philippines-Russia Business Council, Inc.

SEC En Banc Case
No. 07-08-135

Philippines-Russia Business Council,
Applicant.
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DECISION

For consideration is the appeal from the decision of the Company Registration and Monitoring Department ("CRMD") dated 4 March 2008, denying the reservation of the applicant's proposed name, "*Philippines-Russia Business Council, Inc.*" ("Council") due to its similarity with a SEC registered entity named *Philippines-Russia Business Council, Inc.*[1]

FACTS OF THE CASE

On 22 February 2008, applicant filed a letter with the Commission requesting the reservation of the name "*Philippines-Russia Business Council*" after finding that the previous registrant of the same name has been revoked. In a letter dated 4 March 2008, CRMD denied the proposed name based on Section 18[2] of the Corporation Code, and the fact that the Commission allows the filing of petition for the purpose of lifting the revocation order. CRMD also wrote that they will not allow a similar name without the appropriate consent for its use.

On 18 March 2008, the counsel for applicant ("Counsel") filed a letter[3] addressed to the Office of the General Counsel ("OGC") stating that after a lapse of almost five years, they find no basis for the former corporation to file a petition for the lifting of the revocation order. Counsel also wrote that the Council was

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[1] Registered on 14 January 1993 with SEC Reg. No. AN930000193 whose Certificate of Registration was revoked on 3 November 2003 pursuant to SEC Order dated 30 September 2003 for non-filing of reports (GIS and AFS) from 1996-2003, pursuant to SEC Circular No. 4 Series of 2008.

[2] 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.

[3] Dated March 17, 2008.

established under the auspices of the Philippine Chamber of Commerce and Industry to engage in encouraging, and fostering close cooperation and continuing communications between the Philippines and Russia in business, commerce, industry, and entrepreneurship, among others. On May 26, 2008, the Commission Secretary requested the applicant to pay an appeal fee and file a Memorandum on Appeal inasmuch as its letter to the OGC appears to be an appeal from the CRMD denial of the use of corporate name.

Applicant complied with the required fee and filed a Memorandum on Appeal with the OGC on 10 July 2008 praying that CRMD's denial of applicant's request for the reservation of the name "*Philippines-Russia Business Council, Inc.*" be set aside and applicant, be allowed to reserve the same.

ISSUE

Did CRMD err in denying applicant's reservation of the subject corporate name?

Section 18 of the Corporation Code and SEC Circular No. 4, Series of 2008

In its Reply Memorandum filed on 5 May 2009, CRMD applied Section 18 of the Corporation Code[4] and affirmed that the registration of the new *Philippines-Russia Business Council, Inc.* will only create confusion to the public. Although it is true, that its revocation on 3 November 2003 extinguished its juridical personality, CRMD referred to a "resolution of the Commission *En Banc* which gives the corporations revoked en masse,..." the opportunity to "...file their Petition to set aside the order of revocation on, or before the sixth year of their respective revocation dates."

The Reply did not specify the said resolution, but SEC Circular No. 4, Series of 2008 dated 15 May 2008 on "The Finality of Mass Revocation Orders" states that the Circular covers corporations registered in 1936 to 2000. *Philippines-Russia Business Council, Inc.* which was registered on 14 January 1993 was revoked on 3 November 2003 and given until November 3, 2009 "to file its Petition to Set Aside the Order of Revocation with the Commission, otherwise the Revocation Order shall become final and Executory."

SEC Memorandum Circular No. 5, Series of 2008

In denying Appellant's proposed name, CRMD likewise relied on Section 15 of SEC Memorandum Circular No. 5, Series of 2008 (Guidelines and Procedures on the Use of Corporate Names) which provides:

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[4] Batas Pambansa Bilang 68 (1980)

> "15.The name of a corporation or partnership that has been dissolved or whose registration has been revoked shall not be used by another corporation or partnership within three years from the approval of the dissolution or six years from the date of revocation unless its use has been allowed at the time of the dissolution or revocation by the stockholders, members or partners who represent majority of the outstanding capital stock or membership of the dissolved corporation or partnership, as the case may be."

CRMD discussed the principle of laches,[5] in relation to the lapse of almost five years from the date of the revocation, which was pointed out by applicant, and the fact that *Philippines-Russia Business Council, Inc.* has not acted on it. It concluded that said principle does not apply to the case because applicant has no possessory right over the name.

CRMD prescribed that the only remedy of applicant is to secure the consent of the majority of the remaining members of the defunct organization allowing them to use the subject name, and that they have no intention to revive its juridical personality, which must be in the form of a Secretary's Certificate or Board Resolution. Otherwise, CRMD will not allow the use of the subject name in spite of the revoked status of *Philippines-Russia Business Council, Inc.* This was on 5 May 2009, prior to the order of revocation being final and executory.

SEC Circular No. 15, Series of 2009

SEC Circular No. 15, Series of 2009 dated 5 November 2009 is a recent development, which further extended the period within which a revoked corporation may file its Petition to Set Aside the Order of Revocation. For subject corporation which was revoked on 3 November 2003, the deadline to file the Petition to Set Aside the Order of Revocation is now 3 November 2010. It states: "Failure to file Petitions to Set Aside the Order of Revocation with the Commission within the periods cited above shall render the revocation orders final and executory."

Thus, if applicant fails to file its Petition to Set Aside the Order of Revocation within the new deadline and after the revocation order has become final and executory, applicant may reserve the name *Philippines-Russia Business Council, Inc.* for itself without having to comply with the requirements imposed by CRMD. If, however, applicant desires to reserve the subject name for itself before the revocation order has become final and executory, it must comply with the requirements of CRMD, inasmuch as CRMD did not err in denying the applicant's reservation of the subject corporate name.

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[5] "... negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Teotimo Eduarte vs. C.A. Domingo Belda, et. al. G.R. No. 121038 July 22, 1999).

WHEREFORE, premises considered, the CRMD's decision is **affirmed** and the instant appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Mandaluyong City, 20 May 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