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

T.D. & S HOPE CHRISTIAN ACADEMY FOUNDATION, INC.,
Respondent-Appellant,

-versus-

SEC En Banc Case No. 07-10-206
[Ref: SEC Case No. 08-05-78]

HOPE CHRISTIAN ACADEMY FOUNDATION, INC.
Petitioner-Appellee.

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DECISION

This resolves the appeal filed by T.D. & S Hope Christian Academy Foundation, Inc. (the "Respondent-Appellant") on 16 July 2010 from the Orders of the Office of the General Counsel ("OGC") dated 05 January 2006 and 02 July 2010, respectively. The dispositive portion of the assailed 02 July 2010 Order reads as follows:

> "**WHEREFORE**, premises considered:
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> 1. The Urgent Motion for Clarification is DENIED.
> 2. The Motion For Imposition of Administrative Sanctions Against Respondent/Motion to Cite Respondent in Contempt is DENIED.
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> Furthermore, the Respondent is hereby **ORDERED** to comply with the Order dated 05 January 2006 and within thirty (30) days from actual receipt of this Order and to submit proof of compliance thereof within the same period. Failure to comply with this order shall be a ground for the revocation of its registration with the Commission.
>
> **SO ORDERED.**"

Facts of the Case

The undisputed facts as found by the OGC are as follows:

Petitioner-appellee filed a letter-petition dated 19 April 2005 seeking that respondent-appellant be ordered to change its corporate name for being identical, misleading and confusingly similar to that of petitioner-appellee.

Finding the petition to be meritorious, a Decision dated 03 August 2005 was issued directing the respondent-appellant to change or modify its corporate name within thirty (30) days from actual receipt of the same.

OGC received a letter dated 02 September 2005 from a certain Dr. Jose Teodorico V. Molina, claiming to be the legal counsel of respondent-appellant and alleging that the respondent-appellant "was not furnished any copy of this petition to change name nor receive any notices of hearings on said petition from SEC." The letter also requested permission to use/adopt the name "Teresita D. Suiza's Hope Christian Academy Foundation, Inc." to "avoid further legal complication."

On 14 September 2005, OGC issued an order requesting comment from the petitioner-appellee, to which the latter, through counsel, complied with accordingly on 30 September 2005.

On 05 January 2006, OGC issued an order denying the letter-request filed by Dr. Jose Teodorico V. Molina and respondent-appellant was once again directed to change or modify its corporate name within thirty (30) days from date of actual receipt of the order.

After a considerable lapse of time from the issuance of the January 05, 2006 Order, or about four (4) years, petitioner-appellee filed a Motion For Imposition of Administrative Sanctions Against Respondent/Motion to Cite Respondent in Contempt dated 11 May 2010, claiming that "despite the order of the Securities and Exchange Commission for respondent to change or modify its corporate name, respondent put up billboards, promotional materials and signages, misrepresenting their school to be HOPE CHRISTIAN ACADEMY FOUNDATION, INC. adopting and propagating their corporate name as HOPE CHRISTIAN ACADEMY, with the manifest intent of defrauding the public xxx"[1]

On the other hand, Atty. Molina feigns ignorance of the case. In his Urgent Motion for Clarification dated and filed on 02 June 2010, he alleges that he "appears to be unaware of this case SEC Case No. 08-05-78."[2] Atty. Molina adds that he "can not even remember whether he received a copy of the SEC General Counsel's Order dated 05 January 2006 denying his letter-request dated 10 September 2005."[3]

In the interest of speedy resolution and disposition of the two motions filed respectively by the parties regarding the final order issued by OGC, an omnibus Order was issued by OGC on 02 July 2010 denying both motions and ordering the respondent-appellant to comply with the Order dated 05 January 2006 within thirty (30) days from actual receipt of the omnibus Order and to submit proof of compliance therewith within

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[1] Paragraph 4, p.1 of the Motion for Imposition of Administrative Sanctions Against Respondent/Motion to Cite Respondent in Contempt.
[2] Paragraph 4, p. 2 of the Urgent Motion for Clarification.
[3] Paragraph 6, Ibid.

the same period, failure of which shall be a ground for the revocation of its registration with the Commission.

Hence, the instant appeal.

Issues

The appeal raises the following issues:

1. Whether the respondent-appellant was accorded due process in the issuance of the assailed Orders dated January 05, 2006 and July 02, 2010, respectively; and

2. Whether the OGC erred in ordering the respondent-appellant, T.D. & S Hope Christian Academy Foundation, Inc., to change or modify its corporate name.

Ruling

The appeal is unmeritorious.

The facts on record do not bear out respondent-appellant's allegations. Respondent-appellant corporation did not dispute that it received on 19 May 2005 the Order of the Commission dated 04 May 2005 directing the officers and members of the Board of the respondent-appellant corporation to file their comment within fifteen (15) days from actual receipt of the Order. Neither did respondent-appellant dispute the fact that it received on 27 June 2005 the Order of the Commission dated 16 June 2005 directing both parties to submit their respective position papers within fifteen (15) days from actual receipt of the Order, failure of which to submit the same, the case shall be deemed submitted for resolution. During this time, the Commission provided respondent-appellant more than ample opportunity to respond, present its side, and submit its own evidence.

Then, on 03 August 2005, the OGC rendered a Decision ordering the respondent-appellant to change or modify its corporate name over which the respondent-appellant corporation sought no appeal.

Respondent-appellant's claim that it was not given due process is therefore without basis. Atty. Molina has not presented any authorization showing that he was authorized by respondent-appellant corporation to represent it in this proceeding. Thus, copies of orders and other processes of this Commission have been consistently sent by registered mail or personal delivery and likewise to and consistently received by the respondent-appellant

Corporation, based on the record.[4] If indeed Atty. Molina has personality to appear in the subject case, he should have requested a copy of the Order from the Commission as soon as he learned of the case against it. Further, Atty. Molina cannot feign ignorance of the case, just like what he claimed in the 02 June 2010 Urgent Motion for Clarification that he "appears to be unaware of this case SEC Case No. 08-05-78" when, in fact, he himself filed with the OGC a letter-request dated 02 September 2005 requesting the OGC to allow the respondent-appellant to use / adopt as their name "Teresita D. Suiza's Hope Christian Academy Foundation, Inc.," to which the OGC issued an Order of Denial on 05 January 2006.

Proceedings before the Commission are summary in nature.[5] This is to afford the parties speedy and just resolution of disputes before the Commission.

It is settled that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[6]

Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, filing charges against the person and giving reasonable opportunity to the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard; or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[7]

Given the length of time and efforts exerted by the Commission to afford respondent-appellant corporation ample opportunity to respond and submit its own evidence, with no less than two opportunities for the respondent-appellant to submit position papers on the issues raised in the petition, there is no need for a hearing. Surely, neither Atty. Molina nor the respondent-appellant corporation can deny that due process was accorded them.

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[4] Based on the registry return receipts, respondent-appellant corporation received on 19 May 2005 the Order of the Commission dated 04 May 2005 directing the officers and members of its Board to file their comment on the letter-petition filed by Atty. Grace Lydda F. Lariego within fifteen (15) days from actual receipt thereof, and likewise on 27 June 2005 the Order of the Commission dated 16 June 2005 directing both parties to submit their respective position papers within fifteen (15) days from actual receipt thereof, failure of which to submit the same, the case shall be deemed submitted for resolution.

[5] 2006 Rules of Procedure of the Securities and Exchange Commission, Rule I, Sections 1-4.

[6] *Philippine Economic Zone Authority (PEZA), et al. vs. Pearl City Manufacturing Corporation, et al.*, G.R. No. 168668, December 16, 2009.

[7] Lily O. Orbase vs. Office of the Ombudsman and Adoracion Mendoza-Bolos, G.R. No. 175115. December 23, 2009

As for the second issue that was raised, the applicable provision of law that governs the use of corporate name is laid down in Section 18 of the Corporation Code, which states:

> "SECTION 18. Corporate Name. No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical 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." (underscoring supplied)

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, 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 reduction of difficulties of administration and supervision of corporations.[8]

As held in *Philips Export B.V. vs. Court of Appeals*,[9] to fall within the prohibition of the law, two requisites must be proven, to wit:

1.) That the complainant corporation acquired a prior right over the use of such corporate name;

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.

As regards the first requisite, the right to the exclusive use of a corporate name free from infringement by similarity is determined by priority of adoption. In this case, petitioner-appellee was incorporated on 27 February 1997. Respondent-appellant, on the other hand, was registered only on 27 June 2000. Thus, being the prior registrant, petitioner-appellee has acquired the right to the use of the name under the principle of *prius tempore potior jure* (first in time, stronger in right).

Anent the second requisite, it is settled that one corporate name is to be regarded as an imitation of another when it so far resembles the other that a person using ordinary care, caution and observation, which the public uses and may be expected to use, would mistake one for the other, the location of the corporation and the characteristic of the business being conducted.[10]

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[8] Lyceum of the Philippines, Inc. vs. Court of Appeals, et al., G.R. No. 101897, 5 March 1993.
[9] G.R. No. 96161, 21 February 1992.
[10] R. Lopez, Corporation Code of the Philippines, Annotated, 304 (1994 Edition)

In the case at bar, there is no doubt that the corporate name of T.D. & S Hope Christian Academy Foundation, Inc. is confusingly similar to that of the corporate name of Hope Christian Academy Foundation, Inc. For one, both the petitioner-appellee and the respondent-appellant are engaged in the same line of business, particularly the operation of educational institutions, in the same city and serve the same clientele. It must be emphasized 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 discretion. It is settled, however, that proof of actual confusion need not be shown and it suffices that confusion is probably or likely to occur.[11] The use of the dominant words "HOPE, CHRISTIAN, ACADEMY and FOUNDATION" by respondent-appellant certainly leads one to conclude that it is affiliated with the petitioner-appellee.

More so, SEC Memorandum Circular No. 14, series of 2000[12] provides for the guidelines in the approval of corporate and partnership names, particularly Sections 3 and 10 thereof, to wit:

> "3. The name shall not be identical, misleading or confusingly similar to one already registered by another corporation or partnership with the Commission or a sole proprietorship registered with the Department of Trade and Industry.
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> 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."
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> and
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> "10. 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."

Under the second paragraph of Section 3 of the said circular, "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" so as to remove the similarity from the prior registered corporate name.

In this case, the addition of distinctive letters in respondent-appellant's corporate name such as "T.D. & S," is not sufficient to satisfy the requirements of the preceding guidelines. In this jurisdiction, the combination of the dominant terms "HOPE, CHRISTIAN, ACADEMY and FOUNDATION" creates a name that is unique and distinctive in relation to the industry which it is being used such that the term is so closely identified with the educational institution set-up by the petitioner-appellee. Thus, under Section 10 of the

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[11] Philips Export B.V. vs. Court of Appeals, G.R. No. 96161, 21 February 1992.
[12] Revised Guidelines in the Approval of Corporate and Partnership Names, adopted on 24 October 2000, and further revised on 17 July 2008, pursuant to SEC Memorandum Circular No. 5, Series of 2008.

foregoing guideline, the consent of the petitioner-appellee is required before the respondent-appellant may employ the words "Hope Christian Academy Foundation" in its corporate name.

Notwithstanding the fact that there are distinctive letters "T.D. & S" in respondent-appellant's corporate name, which may seem to differentiate it from that of petitioner-appellee's name, this alone does not prevent the likelihood of deception or confusion to the transacting public considering the similarity of four (4) dominant terms (HOPE, CHRISTIAN, ACADEMY and FOUNDATION) in their respective corporate names. The adoption by the respondent-appellant of such letters is merely a camouflage to enable it to ride on the goodwill of the petitioner-appellee which had long been established in the instant case. Again, the inclusion by respondent-appellant corporation of the letters "T.D. & S" seemingly to distinguish it from petitioner-appellee's name failed to eliminate the impression that it will not mislead and confuse the clients of the contending corporations.

Likewise, the proposition of the respondent-appellant in its letter-request filed by Dr. Jose Teodorico V. Molina on 10 September 2005 to spell out in full what the initials "T.D. & S" mean and adopt the corporate name "Teresita D. Suiza's Hope Christian Academy Foundation, Inc.," which was previously denied by OGC in its Order dated 05 January 2006, and which was reiterated by respondent-appellant corporation in its Memorandum of Appeal, will not hold water. Regardless of the number of the different words in the proposed name, these words can hardly serve as an effective differentiating medium necessary to avoid confusion or difficulty in distinguishing respondent-appellant from petitioner-appellee. The records reveal that in holding out their corporate name to the public, respondent-appellant highlights the dominant words "HOPE, CHRISTIAN, ACADEMY and FOUNDATION," which is strikingly similar to petitioner-appellee's corporate name, thus making it even more evident that the proposed additional words "Teresita D. Suiza's" are merely descriptive of and pertaining to the owner of respondent-appellant's corporation.

Finally, petitioner-appellee, having been incorporated earlier than respondent-appellant, acquired a prior right over the use of the dominant terms "HOPE, CHRISTIAN, ACADEMY and FOUNDATION" as part of its corporate name in accordance with the "first in time, first in right" doctrine. It is clear from the wordings of Section 18 of the Corporation Code that "no corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical, deceptively, or confusingly similar to that of any existing corporation or to any other name protected by law or is patently deceptive, confusing or contrary to existing laws." Suffice it to say, the mantle of protection is afforded a corporation, which is the prior registrant as opposed a subsequent registrant.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED** for lack of merit. Accordingly, the assailed Orders of the Office of the General Counsel dated January 05, 2006 and July 02, 2010, respectively, directing respondent-appellant to change its corporate name are **AFFIRMED**. Respondent-appellant is hereby directed to change or modify its corporate name within thirty (30) days from receipt of this Decision,

with a **STERN WARNING** that failure to do so shall be a ground for the revocation of its registration with the Commission.

SO ORDERED.

Mandaluyong City, 21 October 2010.

FE B. BARIN*
Chairperson

MA. JUANITA E. CUETO
Commissioner
Officer-in-Charge

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
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