Republic of the Philippines
Department of Finance
Securities and Exchange Commission

MARBEL INSTITUTE OF TECHINICAL COLLEGE, INC. and CORNELIO P. ALOOT, JR.

Petitioner,

Versus

SEC Case No. 05-09-0336

AGAPITO D. LUBATON, NIDA D. LUBATON, JULIUS S. LUBATON, JAYBELLE P. ANTONIO, TESSIE D. ELISAN, LORENZON B. MARINAS, and NAZER B. MANGLICMOT, in their capacity as incorporators/directors of MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC. and MARVELOUS INSTITUTE OF TECHNICAL COLLEGE, INC.

Respondents.

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DECISION

Before us is a *Petition*[1] filed on 08 April 2008 by MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC., represented by its President CORNELIO P. ALOOT JR., (**Petitioner**) praying to revoke the Certificates of Registration of MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC. (**Respondent Marbel**) and MARVELOUS INSTITUTE OF TECHNICAL COLLEGE, INC. (**Respondent Marvelous**).

Facts of the Case

Petitioner, formerly known as "Marbel Institute of Technology, Inc.", is a non-stock and non-profit corporation registered with the Commission on 08 March 1996 with SEC Registration No. DN96000152. In February 2007, it amended its corporate name to "Marbel Institute of Technical College, Inc.".[2] Its principal office is located at Alunan Avenue, Koronadal, South Cotabato.[3] Its incorporators are Felix T. Estrabon, Agapito D. Lubaton, Cornelio P. Aloot Jr., Felisa G. Estrabon, Nida D. Lubaton, and Evelyn P. Aloot[4].

Respondent Marbel is a non-stock and non-profit educational corporation registered with the Commission on 20 December 2007 under SEC Registration No. CN200732031. Its principal office is located at Alunan Avenue, Koronadal, South

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[1] Dated 11 April 2008, forwarded for disposition by the Commission's Davao Extension Office (SEC-DEO).
[2] Paragraph 1 and Annex "A" of the Petition.
[3] 1st paragraph of the Petition..
[4] Petitioner Marbel's Articles of Incorporation.

Cotabato.[5] Its incorporators are Agapito D. Lubaton, Julius S. Lubaton, Nida D. Lubaton, Jaybelle P. Antonio, and Tessie D. Elisan.[6]

Respondent Marvelous is a non-stock and non-profit educational corporation registered with the Commission on 08 January 2008 under SEC Registration No. CN200826441.[7] Its principal office is located at Estember Subdivision, Purok Matapat, Brgy. Zone IV, City of Koronadal, South Cotabato. Its incorporators are Julius S. Lubaton, Lorenzo B. Marinas, Nazer R. Manglicmot, Jaybelle P. Antonio, and Tessie D. Elisan.[8]

Petitioner claims that on 16 December 2007, its Board of Trustees (BOT) suspended Agapito Lubaton (**Agapito**), then President of Petitioner, for gross dishonesty and misappropriation of corporate funds.[9] Just four (4) days from his suspension, Agapito, together with his wife Nida Lubaton (**Nida**) and some of Petitioner's long time employees namely, Julius Lubaton (**Lubaton**), Jaybelle P. Antonio (**Antonio**) and Tessie D. Elisan (**Elisan**), incorporated Respondent Marbel.[10] Thereafter, Respondent Marbel's incorporator allegedly started spreading information to the public that Petitioner is a fake school[11]. Then, Respondent Marbel started to construct a building adjacent to Petitioner's school[12].

Petitioner likewise avers that Agapito and Nida, after being warned by Petitioner for misrepresentation and deliberate fraud in registering "MARBEL", formed Respondent Marvelous. Lubaton, Antonio, Elisan, Nazer R. Manglicmot (**Manglicmot**) and Lorenzo B. Marinas (**Marinas**) became the incorporators of Respondent Marvelous. Petitioner further alleges that Respondent Marbel and Respondent Marvelous were formed to confuse and mislead the public that their purported new school was actually the petitioner corporation. Because of these acts, it is argued that Respondents committed fraud in the procurement of their Certificates of Registration. [13]

On 22 September 2008, the Commission, through the Office of the General Counsel, directed all the Respondents to file their respective *Comment/Opposition* to the Petition[14].

Agapito and Nida, on 04 November 2008, filed their *Answer & Comment*[15] to the instant petition. In their joint answer, they aver that there is a pending intra-corporate case filed with the Regional Trial Court, Branch 23 of General Santos City concerning their removal as officers of Petitioner[16]. They also argue that they did not operate an

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[5] 3rd Paragraph, Respondent Marbel's Articles of Incorporation.
[6] Paragraph 2 and Annex "B" of the Petition.
[7] Paragraph 3 and Annex "E" of the Petition.
[8] Annex "F" of the Petition. Fifth Article.
[9] Paragraph 4 of the Petition.
[10] Paragraph 5 of the Petition.
[11] Paragraph 7 of the Petition.
[12] Paragraph 8 of the Petition.
[13] Paragraphs 9-10 of the Petition.
[14] Order dated 22 September 2008.
[15] Dated 17 October 2008.
[16] Annex 1 of Agapito and Nida's Answer & Comment.

educational institution under the same name of Petitioner[17]. Furthermore, they also claim that they have no participation in the registration, operation and management of Respondent Marvelous[18].

On the other hand, Julius, Antonio, Elisan, Marinas and Manglicmot filed, on the same day, a separate *Answer & Opposition*[19]. In their answer, they argue that there was no bad faith and deliberate fraud in the incorporation of Respondent Marbel and Marvelous. They declare that they used to be Petitioner's employees who were constructively dismissed and now subject of a pending labor dispute with Regional Arbitration XII of the National Labor Relations Commission. They further assert that Agapito and Nida are not members, incorporators nor officers of Respondent Marvelous. They claim that Agapito and Nida has no control in the management and affairs of Respondent Marvelous. They also claim that in no instance that Respondent Marvelous is misrepresenting itself to be the "True" or "Real" Marbel Institute of Technical College, Inc. Finally, they assert that Respondent Marvelous' name is not deceptively and confusingly similar to Petitioner's name.

Then, the Commission, through the General Counsel, directed Petitioner to file its *Reply* to Respondents' *Answer and Opposition* within ten (10) days, thereafter, for the Respondents to file a *Rejoinder* with five (5) day from receipt of the *Reply*.[20] However, both parties failed to file their Reply and Rejoinder within the periods given.

Hence, this case is now submitted for resolution.

Issue/s

The issues in the instant case are:

1. Whether or not Respondents Marbel and Marvelous committed fraud in the procurement of their Certificate of Incorporation.
2. Whether or not Respondents' corporate names "MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC." and "MARVELOUS INSTITUTE OF TECHNICAL COLLEGE, INC." are identical or deceptively or confusingly similar to Petitioner's corporate name "MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC.".

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[17] Paragraph 2 of Agapito and Nida's Answer & Comment.
[18] Paragraph 3 of Agapito and Nida's Answer & Comment..
[19] Dated 20 October 2008.
[20] *Order* dated 20 November 2008.

Ruling

There is no sufficient ground to revoke Respondent corporations' Certificates of Incorporation.

As to the Fraud in the Procurement of Respondents' Certificate of Incorporation

Petitioner claims that there is fraud when Agapito and Nida incorporated the two Respondent corporations with names similar to its own in order to confuse or deceive the public. On the other hand, Respondents Marbel and Marvelous argue that there was no deliberate fraud and they were in good faith when they incorporated the said entities.

We find Petitioner's claim of fraud to be unmeritorious. Petitioner's allegation of fraud is not what is contemplated in Section 6, (l), sub- paragraph 1 of P.D. No. 902-A.

The fraud mentioned in the above-stated legal provision as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to fraud attendant in the registration of the corporation, partnership or association and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration of the said corporation, partnership or association[21].

There are two kinds of fraud, actual or constructive fraud. Actual fraud is intentional fraud; it consists of deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. Constructive fraud, on the other hand, is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or public confidence, or to injure public interest[22].

Constructive fraud may result from reckless and heedless representations although they are not made with a deliberate intent to deceive. "Fraud" as used in Section 6, paragraph L (1) of P.D. No. 902-A includes constructive or legal fraud, and not just actual or moral fraud. The subject provision is not concerned with a crime or felony. And thus, criminal intent or intent to deceive is not essential. Therefore, any material statement made by an incorporator in the Articles of Incorporation that turns out to be a falsehood as determined by the Commission is thereby considered as fraudulent regardless of the incorporator's intent or knowledge of such falsehood[23].

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[21] In the matter of Silvermoon Security & Investigation Agency, Inc., et. al., SEC Case No. 12-05-99 citing In the matter of Charlyn Marketing Enterprise, SEC Case No. 03-05-49.

[22] In the matter of Knight Capital Phils., Inc., SEC Admin. Case No. 07-10-121.

[23] Ibid.

In the instant case, Petitioner simply alleges that there was fraud when Respondents incorporated Respondents Marbel and Marvelous which have similar corporate names to its own in order to to confuse or deceive the public. As above-discussed, the fraud contemplated in Section 6 (l), sub-paragraph 1 of P.D. No. 902-A pertains to fraud in the application or procurement of a certificate of incorporation such as incorporating false statements in the application documents, forging signatures of incorporators, using names of deceased incorporators, and other similar circumstances. In this case, such fraud is not present.

Finally, the Commission has consistently ruled that not every casual infraction would be a valid ground for revocation.[24] The drastic remedy of dissolving a corporation must be exercised with great caution and not in doubtful cases. [25] Revocation will only be resorted if all the available remedies have been exhausted. In the instant case, Petitioner's allegation and evidence does not warrant the revocation of Respondents Marbel and Marvelous' Certificate of Incorporation. However, Petitioner's allegation would permit a remedy for a change of name because of the possible similarities of corporate names.

As to Petitioner and Respondents' Corporate Names

Section 18 of the Corporation Code provides:

> "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."

In *Lyceum of the Philippines vs. Court of Appeals*[26], the Supreme Court interpreted the above-stated provision as:

> "Section 18 of the Corporation Code expressly prohibits the use of a corporate name which 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". **The policy behind the foregoing prohibition is to avoid fraud upon the public that will have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporation.**"

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

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[24] Ramos vs. Ramos, et al. SEC Case No. 09-05-69.

[25] In the Matter of the Petition for Involuntary Dissolution of Starconnection Inc., SEC Case No. 06-09-271, dated 7 January 2010.

[26] 219 SCRA 610, 615 [1993].

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.[27]

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; 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. [28]

Petitioner assails the corporate name of two (2) corporations, hence we will resolve the same separately.

I. Respondent Marbel Institute of Technical College, Inc.

We agree with Petitioner's contention that Respondent Marbel's corporate name is identical to the former's corporate name.

As to the first requisite, it has been held that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption[29]. In this case, Petitioner was incorporated on 08 March 1996 and later amended its name in February 2007 to "MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC.".[30] On the other hand, Respondent Marbel incorporated on 20 December 2007.[31] Undeniably, Petitioner was granted the right to use its corporate name earlier than Respondent. Thus, Petitioner has priority of adoption over the name ""MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC.".

As to the second requisite, 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 and the Court must look to the record as well as the names themselves[32]. It is settled that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.[33] It can be clearly seen that Respondent Marbel's corporate name which is ""MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC." is identical to Petitioner's corporate name. Both names contains the same

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[27] 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

[28] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et. al., GR No. 122174, October 3, 2002 citing Philips Export B.V. vs. Court of Appeals 206 SCRA 457, 463 [1992].

[29] Ibid.

[30] Note 2, Supra.

[31] Note 3, Supra.

[32] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et. al., GR No. 122174, October 3, 2002.

[33] Philips Export B.V. et. al. vs. Court of Appeals, et. al., GR No. 96161, February 21, 1992 citing 6 Fletcher [Perm Ed], pp. 107-108.

exact words and engaged in education business. Since both names are identical, this will likely result in confusion of the public.

Further, during the incorporation of Respondent Marbel, the Commission, in recognition of the possibility that a better right to the corporate name may be asserted by another entity, required the filing of an "undertaking to change name" which reads:

> In connection with the registration of the (name of the corporation), I, the undersigned officer/director/partner/stockholder thereof, hereby manifest our willingness to change its corporate name in the event another person, firm, or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it.

II. Respondent Marvelous Institute of Technical College, Inc.

We disagree with Petitioner's contention. While it is true that Petitioner is incorporated prior to Respondent Marvelous, however, the latter's corporate name is not identical, deceptively or confusingly similar to Petitioner's corporate name.

Petitioner's corporate name is "Marbel Institute of Technical College, Inc." while Respondent Marvelous' corporate name is "Marvelous Institute of Technical College, Inc." Obviously, the words "Institute", "Technical" and "College" are equally present in both names. However, these words are generic terms which are not capable of exclusive appropriation by the Petitioner.

The only difference between the two names is the presence of the word "Marbel" in Petitioner's name and "Marvelous" in Respondent's name. In *Lyceum of the Philippines vs. Court of Appeals*[34], the Supreme Court ruled that:

> "We do not consider that the corporate names of private respondent institutions are "identical with, or deceptively or confusingly similar" to that of the petitioner institution. True enough, the corporate names of private respondent entities all carry the word "Lyceum" but confusion and deception are effectively precluded by the appending of geographic names to the word "Lyceum." Thus, **we do not believe that the "Lyceum of Aparri" can be mistaken by the general public for the Lyceum of the Philippines, or that the "Lyceum of Camalaniugan" would be confused with the Lyceum of the Philippines.**"

Relative to the instant case, the words "Marbel and "Marvelous" could easily be differentiated by an ordinary person using ordinary care and discrimination. These words are spelled and pronounced differently that it would be impossible not to distinguish one from the other. Further, Respondent Marvelous adduced sufficient evidence that is has promoted its school as "Marvelous College". Undoubtedly, when read in their entirety, the two corporate names "Marbel Institute of Technical College, Inc." and

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[34] Note 19, Supra.

"Marvelous Institute of Technical College, Inc." are not identical nor confusingly or deceptively similar.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Respondent **MARBEL INSTITUTE OF TECHNICAL COLLEGE, INC.** with SEC Registration No. CN200732031 is hereby ordered to **CHANGE** its corporate name by deleting the word "Marbel" and amending its Articles of Incorporation. It is further directed to submit a compliance report within thirty (30) days from date of receipt hereof, enclosing therein a certified copy of the approved amended Articles of Incorporation.

2. The prayer for change of name against Respondent **MARVELOUS INSTITUTE OF TECHNICAL COLLEGE, INC.** with Registration No. CN200826441 is hereby **DISMISSED**.

SO ORDERED.

Pasay City, Philippines, 18 October 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO*
Commissioner

*On Official Business