Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

MICROTEL INNS AND SUITES (PILIPINAS), INC.,
Appellant,

SEC En Banc Case No. 05-13-290
Change of Corporate Name

- versus -

MICROTEL GLOBAL SOLUTIONS, INC.,
Appellee.
x----------x

DECISION

For the consideration of the En Banc is the Appeal Memorandum filed on 2 May 2013 by Microtel Global Solutions, Inc. [MICROTEL GLOBAL], which seeks to reverse the **Order dated 19 March 2013 of the Commission's Office of the General Counsel (OGC)**, as well as the Reply Memorandum filed on 16 May 2013 by Microtel Inns and Suites (Pilipinas), Inc. [MICROTEL INNS][1] and the Rejoinder filed 26 June 2013 by MICROTEL GLOBAL. The OGC directed MICROTEL GLOBAL to change its corporate name for being confusingly similar to that of MICROTEL INNS which has a prior right to use such name.

RELEVANT FACTS

MICROTEL INNS is a domestic corporation, registered on **11 December 1998**.[2] Its primary purpose is:

> [T]o engage in, conduct and carry-on the business of franchising hotels and tourism-related businesses and to operate and provide professional management for these businesses.[3]

MICROTEL GLOBAL is a domestic corporation, registered on **7 May 2008**.[4] Its primary purpose is:

> To engage in, conduct, operate, and carry on the operation of a Business Process Outsourcing (BPO)/Call Center including both inbound and outbound calls, marketing and survey campaigns, data communications and IT support, professional services, and knowledge management support.[5]

On **25 August 2011**, MICROTEL INNS filed its **Petition** for Change of Corporate Name. It argued that:

(1) It acquired a prior right over the name MICROTEL INNS AND SUITES (PILIPINAS), INC., where the dominant term is "MICROTEL";
(2) It also registered the Business Name "MICROTEL INNS AND SUITES" with the Department of Trade and Industry (DTI);

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[1] During the pendency of this case, MICROTEL INNS amended its corporate name to PHINMA MICROTEL HOTELS, INC.
[2] Company Reg. No. A199816935
[3] MICROTEL INNS' Articles of Incorporation
[4] Company Reg. No. CS200806908
[5] MICROTEL GLOBAL's Articles of Incorporation

(3) MICROTELL INNS extends franchises to hotel operators across the Philippines and has thus acquired goodwill over the name "MICROTEL";
(4) The name MICROTEL GLOBAL SOLUTIONS, INC. is confusingly similar to its own, since the dominant term is also "MICROTEL";
(5) The SEC Guidelines on Corporate Names disallows the addition of one or more distinctive words to a unique name, and "MICROTEL" is a unique name;
(6) Even though they are engaged in different industries, the public would be led to believe that MICROTEL INNS, the older and more established company, has branched out into the Business Process Outsourcing/Call Center business.

On **16 September 2011**, MICROTEL GLOBAL filed its **Answer**. It did not contest that the name "MICROTEL INNS AND SUITES (PILIPINAS), INC." was registered earlier. However, it argued that:

(1) Generic names cannot be appropriated and "MICROTEL" is merely a combination of two generic terms, "MICRO" (meaning "small") and "TEL" (an abbreviation of "telecommunication");
(2) The SEC Guidelines on Corporate Names allow the use of a similar name if one or more distinctive words are added, such as "GLOBAL SOLUTIONS";
(3) The names of the parties are not *confusingly* similar, because they are engaged in different industries—MICROTEL INNS is in the hotel industry, while MICROTEL GLOBAL is in the business process outsourcing industry.

On **19 March 2013**, after notice and hearing, the OGC issued the assailed Order, declaring that:

(1) MICROTEL INNS **acquired a prior right** over the name because:
   a. MICROTEL INNS adopted it as early as its incorporation in 1998, whereas MICROTEL GLOBAL only adopted the name upon its incorporation in 2008;
   b. The dominant term "MICROTEL" is unique;
   c. "MICROTEL INNS" is also registered with the DTI as a Business Name.

(2) MICROTEL GLOBAL SOLUTIONS, INC. is **confusingly similar** to MICROTEL INNS AND SUITES (PILIPINAS), INC. because:
   a. Both corporate names contain the dominant term "MICROTEL";
   b. The addition of one or more distinctive words shall not be allowed if the registered name is *unique*, unless the Board of Directors of MICROTEL INNS consents—and it does not consent;
   c. Although the principal businesses are different, there is a likelihood of **"confusion of affiliation"** since the public may be misled into thinking there is a connection between them, *i.e.* MICROTEL INNS' hotel business may include "managing inbound/outbound calls" and "handling marketing and survey campaigns", which is MICROTEL GLOBAL's business.

On **2 May 2013**, MICROTEL GLOBAL filed the instant Appeal Memorandum.

MICROTEL GLOBAL reiterated that it complied with the SEC Guidelines on Corporate Names, viz.

> As readily observed, **two (2) added distinctive words** in respondent's corporate name are added: "**GLOBAL**" and "**SOLUTIONS**" which have different spelling, terminology, and meanings from any word in the petitioner's name "MICROTEL INNS AND SUITES (PILIPINAS), INC.[6]

[6] Page 5 of Appeal Memorandum

MICROTEL GLOBAL also reiterated that the two corporations are engaged in different businesses, viz.

> Undoubtedly, the respective business of herein parties do not belong in the same class, category, or even general classification. They are completely dissimilar, unrelated, and not competing [with] each other.[7]

MICROTEL GLOBAL further reiterated that "MICROTEL" is a generic name, viz.

> The word "MICROTEL" is a derivative or combination of two words: "micro" and "tel." The word "micro" is a common generic word which is defined under [the] Webster English Dictionary [as]: "combining form in metric" or "an apparatus or instrument that enlarges in size and volume."
>
> Under common understanding, parlance, usage, and practice, the word "tel" is the abbreviation of "telephone."
>
> Separately or individually, either "micro" or "tel" cannot be registered nor appropriated by anyone for his own exclusive use.
>
> Corollary, a combination of "micro" and "tel" leading to "Microtel" cannot be considered as a coined or unique [name], and cannot be registered not appropriated for the exclusive benefit of any party.[8]

Finally, MICROTEL GLOBAL argued that there will be no confusion of affiliation since it is unlikely for a hotel to enter into the call center business, or vice-versa.

On **16 May 2016**, MICROTEL INNS filed its **Reply Memorandum**.

MICROTEL INNS reiterated that it is the prior registrant and that it has acquired goodwill, viz.

> Since its incorporation in 1998. Appellee [MICROTEL INNS] has been engaged in the business of franchising hotels and tourism-related businesses, [as well as] operating and providing professional management for their businesses. In particular, Appellee grants franchises in the Philippines for the operation of hotels under the internationally-known "Microtel" name.[9]

MICROTEL INNS reiterated that "MICROTEL" is a unique name, capable of appropriation, viz.

> The word "microtel" is a coined or unique word which is not found in any English Dictionary. It has no particular meaning and it is not commonly known to be an abbreviation of any dictionary word.[10]

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[7] Page 6 of Appeal Memorandum
[8] Page 7 of Appeal Memorandum
[9] Page 3 of Reply Memorandum
[10] Supra note 9

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> In a desperate attempt to evade the legal import of [the SEC Guidelines on Corporate Names], Appellant [MICROTEL GLOBAL] foists the hair-splitting and self-declared proposition that [neither] "micro" or "tel" [can] be registered separately or individually, ergo, a combination of "micro" and "tel" leading to "Microtel" cannot be considered as coined or unique, and cannot be registered or appropriated.[11]

xxx xxx xxx

> The said [SEC Guidelines on Corporate Names] do not distinguish or make exceptions for "derivative" or "combination" words. As against Appellant's hair-splitting proposition, nothing can change the fact that the word "microtel" cannot be found in any dictionary and thus it is indisputably a coined or unique word. That fact that a non-dictionary word may be a combination or derivative of other known words does not change the fact that it is a coined or unique word. To illustrate, the fact that "Starbucks" may be a combination of "star" and "bucks" or that "Jollibee" is a derivative of "jolly" and "bee" does not alter their character as coined or unique words within the contemplation of [the SEC Guidelines on Corporate Names].[12]

MICROTEL INNS agreed with the OGC ruling that distinctive words cannot be added to a unique name and expressly declared that it does not give consent to such use, viz.

> The wordings of [the SEC Guidelines on Corporate Names] are plain, simple, and unequivocal in providing that if a registered mark consists of a "coined or unique word", it cannot be registered by another party.[13]

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> Appellee [MICROTEL INNS] has not authorized nor consented to the Appellant's use of the word "Microtel" in the latter's corporate name.[14]

Finally, MICROTEL INNS argued with the OGC reasoning that there is a likelihood of confusion as to source, because a hotel/tourism business may include call center operations.

On **26 June 2013**, MICROTEL GLOBAL filed its Rejoinder (to MICROTEL INN's Reply Memorandum). It rephrased, for emphasis, the main arguments in its Appeal Memorandum, *i.e.* "microtel" is generic and there is no likelihood of confusion.

Hence this Appeal.

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[11] Page 8 of Reply Memorandum
[12] Id.
[13] Id.
[14] Supra note 9

DISCUSSION

In order for a *Petition for Change of Corporate Name* to prosper, the two (2) requisites laid-down in the Supreme Court case of **Philips Export B.V. v. Courts of Appeals, G.R. No. 96161 21 February 1992** (*Philips* case), must be satisfied, to wit:

> Our own Corporation Code, in its Section 18, expressly provides that:
>
> 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 law.* Where a change in a corporate name is approved, the commission shall issue an amended certificate of incorporation under the amended name. (Emphasis supplied)
>
> The statutory prohibition cannot be any clearer. To come within its scope, **two requisites** must be proven, namely:
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> **(1)** that the complainant corporation acquired a **prior right** over the use of such corporate name; and
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> **(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.
>
> (Emphasis supplied)

Prior Right

According to the *Philips* case, the test of prior right is priority of adoption.

Here, MICROTEL INNS adopted its name as early as its incorporation on **11 December 1998**, while MICROTEL GLOBAL only adopted its name upon its incorporation on **8 May 2008**.

The name "MICROTEL INNS AND SUITES (PILIPINAS), INC." is *unique*, not generic, and thus capable of appropriation. The dominant term "MICROTEL" does not appear in any English dictionary. It is a combination of the word "micro" and the suffix "tel".

Besides being protected as a Corporate Name, "MICROTEL" is protected as a Business Name, since it is registered with the DTI. **Section 18 of the Corporate Code** prevents the registration of a "name already protected by law," which includes business names, viz.

> 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.

Therefore, having earlier adopted its unique name, MICROTEL INNS has a prior right over MICROTEL GLOBAL.

Confusingly Similar

According to the *Philips* case, the test of whether a name is confusingly similar is "whether the similarity is such as to mislead a person, using ordinary care and discrimination. In so doing, the Court must look to the record as well as the names themselves." The case adds that "proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur."

Here, it is evident, even to an ordinary person, that "MICROTEL" is the dominant phrase in both of the parties' names and that the spelling is identical in both corporate names. The word "MICROTEL" does not appear in any English dictionary. "MICRO" is not necessarily related to the suffix "TEL" and thus the combination is unique, leading an ordinary person to assume that MICROTEL INNS and MICROTEL GLOBAL are related.

The OGC correctly ruled that there is a likelihood of confusion, viz.

> [E]ven though the businesses of both corporations are different from each other, confusion of business may exist when products are non-competing but related enough to produce **confusion of affiliation.**[15] (Emphasis supplied)
>
> xxx xxx xxx
>
> In the instant case, the primary purpose of [each corporation] varies, *i.e.* [MICROTEL INNS is engaged in the hotel business while [MICROTEL GLOBAL] is engaged in the call center business. However, based on its Articles of Incorporation, [MICROTEL INNS] may engage in tourism-related businesses and operate professional management services of said businesses. It cannot be denied that in hotel and tourism-related businesses, **professional management services** may include managing inbound and outbound calls [as well as] handling marketing and survey campaigns, which are majority of the services being provided by [MICROTEL GLOBAL]. Consequently, allowing the use of the word "MICROTEL" in [MICROTEL GLOBAL]'s name may thwart the potential expansion of [MICROTEL INNS] into tourism-related and professional management businesses. (Emphasis supplied)
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> xxx xxx xxx
>
> Moreover, it is likely possible that the public may be misled [into] thinking that [MICROTEL INNS], being engaged in the

[15] Page 5 of assailed OGC Order

> hotel and tourism-related businesses, and having an international brand, has expanded its business in the same field as [MICROTEL GLOBAL], considering the services that [MICROTEL GLOBAL] provides are **necessary** in [MICROTEL INNS]' business.[16] (Emphasis supplied)

Therefore, "MICROTEL GLOBAL SOLUTIONS, INC." is confusingly similar to "MICROTEL INNS AND SUITES (PILIPINAS), INC."

No Consent

SEC Memorandum Circular No. 17-2017 (Consolidated Guidelines and Procedures on the Use of Corporate and Partnership Names) requires the consent of the prior registrant in order to use a unique name, viz.

> [T]he addition of one or more distinctive words shall not be allowed if the registered name is coined or unique, unless the Board of Directors xxx of the subject corporation xxx gives its consent to the applied name.[17]

Here, MICROTEL INNS, the prior registrant of a coined or unique name, does not consent to MICROTEL GLOBAL's use of the word "Microtel," viz.

> Appellee [MICROTEL INNS] has not authorized nor consented to the Appellant's use of the word "Microtel" in the latter's corporate name.[18]

Therefore, MICROTEL GLOBAL should not be allowed to use the word "MICROTEL" in its corporate name, since it is confusingly similar to MICROTEL INNS.

WHEREFORE, the 19 March 2013 Order of the OGC is hereby AFFIRMED.

SO ORDERED.

Pasay City, Philippines; 24 January 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

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[16] Page 6 of assailed OGC Order
[17] 2nd Paragraph of Number 3(b)
[18] Supra note 9