Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

UNITOP GENERAL MERCHANDISE, INC.,
Appellant,

-versus-

SEC En Banc Case No. 05-15-372

NEWTOP GENERAL MERCHANDISE CORP.,
Appellee.
x----------x

DECISION

For consideration of the Commission is the Memorandum on Appeal dated 8 May 2015 (the "Appeal") filed by Unitop General Merchandise, Inc. (Appellant Unitop) assailing the Order dated 13 April 2015 (the "Assailed Order") of the Office of the General Counsel (OGC) for allegedly having been issued without merit, and praying that the same be set aside by the Commission. The dispositive portion of the Assailed Order reads:

> "*WHEREFORE, premises considered, the instant Petition is DISMISSED for lack of merit.*"

RELEVANT FACTS

The instant Appeal stemmed from the Petition for Change of Corporate Name (the "Petition") which was filed by Appellant Unitop on 27 May 2013 against Newtop General Merchandise Corp. (Appellee Newtop) for alleged violation by the latter of Section 18 of Batas Pambansa Blg. 68 (the "Corporation Code").

As culled from the records of the case, Appellant Unitop was issued a Certificate of Incorporation on 21 November 2005 with SEC Registration No. CS200519028, and since then, it was able to expand its operations through the 40 branches that were subsequently established nationwide using a business tagline "*Your budget friendly store*". Article SECOND of Appellant Unitop's Articles of Incorporation provides that its primary purpose is "*to carry on a general merchandise or mercantile business of buying, selling at wholesale or retail importing and exporting or otherwise dealing in any and all kinds of dry goods*".

On 31 January 2011, Appellee Newtop was issued a Certificate of Incorporation with SEC Registration No. CS201101395. Article SECOND of Appellee Newtop's Articles of Incorporation provides that its primary purpose is "*to engage in the business of wholesale retail trading of household wares such s all plastic products, housewares, glass wares, kitchen wares, some appliances like electric fan, DVD, AM/FM radio, RTW, garments, furniture and etc.*"

In its Answer dated 18 June 2013 which was filed on 19 June 2013, Appellee Newtop prayed for the dismissal of the Petition for lack of merit, arguing that the corporate names of the parties are not at all similar when considered in their entirety.

A number of conferences were conducted by the OGC, however the parties failed to forge an amicable settlement.

On 22 June 2013, and during the pendency of the case with the OGC, Appellee Newtop amended its Articles of Incorporation by changing its corporate name to NEWSTAR SHOPPING MART INC.

After the parties filed their respective Position Papers which basically reiterated their previous arguments, the case was submitted for decision, and on 13 April 2015 the OGC issued the Assailed Order. In the Assailed Order, the OGC justified the dismissal of the Petition on its finding that the corporate names of the parties are entirely different when juxtaposed, and that persons using ordinary care and discrimination can easily distinguish one from the other.

Hence, this Appeal.

ISSUE

Whether Appellee's corporate name Newtop General Merchandise Corp. is confusingly similar to Appellant's corporate name Unitop General Merchandise, Inc.

RULING

The Commission denies the Appeal on the ground that the issue presented therein has become moot and academic.

In the case of *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administrator*[1], the Supreme Court explained when a case becomes moot or academic, thus:

> "A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."

The approval of the amendment of Appellee Newtop's Articles of Incorporation, changing its corporate name to NEWSTAR SHOPPING MART, INC. was a supervening event that resulted in the natural death of the justiciable controversy presented in this case. Consequently, considering that any decision that the Commission will have on the issue will no longer have any practical value or purpose, the denial of the Appeal is in order.

WHEREFORE, premises considered, the Memorandum on Appeal of Unitop General Merchandise, Inc. is hereby denied for having become moot and academic.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for its information.

SO ORDERED.

Pasay City, Philippines, 30 April 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[1] G.R. No. 208660, March 5, 2014.