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

MEGA ENTREPRENEURS GLOBAL ALLIANCE (MEGA C), CORPORATION,
Appellant,

- versus -

SEC En Banc Case No. 06-10-204
For: Appeal

MEGA C HEALTH VENTURES, INC.,
Appellee.
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## DECISION

Before the Commission En Banc is the Appeal filed by Mega Entrepreneurs Global Alliance (Mega C) Corporation ("Appellant") seeking the reversal of the Order dated 25 May 2010 ("Assailed Order") issued by the Office of the General Counsel ("OGC"). The Assailed Order granted the Petition for Change of Name filed by Mega C Health Ventures ("Appellee") against Appellant.

On 17 June 2010, Appellant filed a Notice and Memorandum of Appeal. On 29 June 2010, the Commission En Banc directed Appellee to file a Reply Memorandum. On 05 July 2010, Appellee filed a Reply Memorandum.

In this Appeal,[1] Appellant primarily argues that the OGC committed grave error in granting the Appellee's Petition and declaring that Appellee acquired a prior right to use the term "MEGA C" in its corporate name. It argues that jurisprudence requires a long use of the trade name to earn an exclusive right to its use, and Appellee, being registered only on 8 May 2009, has not been using the term "MEGA C" as part of its corporate name for so long a time to acquire an exclusive right to its use or a secondary meaning. It maintains that the Assailed Order did not consider the registration of the business name "Mega C Health Ventures" with the Department of Trade & Industry in favor of Cynthia S. Gavile, the representative of Appellant in the instant case, on 10

[1] Records, pp. 1 – 41.

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March 2009, and the registration with the Bureau of Food and Drugs of the brand name "Mega C" in favor of Mega C Health Ventures on 17 August 2009.

Appellee, in its Reply Memorandum,[2] counters that adopting three other different words will not cure the similarity between the names of the parties because (1) the cited SEC Guideline applies only when there is one identical or similar word and not when there are two identical words as in the case of Appellee; and (2) the term "MEGA C" is coined and Appellee's Board of Directors did not give its consent to the use of said term by Appellant. It maintains that Appellee acquired a prior right to the use of the term "MEGA C" since it has been registered earlier than Appellant. It argues that the doctrine of secondary meaning is not applicable in the instant case because the term "MEGA C," not being descriptive or geographical, is capable of exclusive appropriation. It avers that the execution by Mrs. Cynthia Gavile of her 3 June 2009 Affidavit is a positive act confirming her abdication of all her rights and interest over the term "MEGA C" in favor of Appellee. It pointed out that Mrs. Gavile spearheaded the incorporation of Appellee and was its President and Chairman of the Board and therefore, Appellee took over the business operations of Mrs. Gavile's single proprietorship. It also avers that Mrs. Gavile remains to be a stockholder of record of Appellee. It further points out that both parties are engaged in the same line of business and are selling the same kind of vitamins wherein the only difference in its brand name is the addition of the number 500."

In essence, the issues to be resolved in this Appeal are:

(1) whether Appellant has acquired a prior right to use the term "MEGA C" in its corporate name over Appellee; and

(2) whether the term "MEGA C" is a word incapable of exclusive appropriation.

We rule in the negative.

In *Philips Export B.V. et al. v. Court of Appeals et al.,*[3] the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. In the instant case, Appellee has been using the term "MEGA C" as part of its corporate name since its registration with the SEC on 08 May 2009 whereas Appellant only registered its corporate name on 22 January 2010. Thus, there is no doubt that Appellee, being a prior registrant, has a better right to use the term "MEGA C" in its corporate name over Appellant.

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[2] Records, pp. 48 - 65.

[3] G.R. No. 96161, 21 February 1992, citing 1 Thompson, p. 80 citing Munn v. Americana Co., 82 N. Eq. 63, 88 Atl. 30; San Francisco Oyster House v. Mihich, 75 Wash. 274, 134 Pac. 921.

The existence of a sole proprietorship engaged in the same line of business using the term "MEGA C" as part of its business name does not warrant the use by Appellant of such term. Appellant, although represented by Mrs. Gaviles, is a separate and distinct entity from the sole proprietorship owned by Mrs. Gaviles. More importantly, records do not show that the sole proprietorship of Mrs. Cynthia Gaviles consented to Appellant's use of the term "MEGA C" for the latter to acquire the former's right to the use of such term over Appellee. Given the foregoing, Appellant cannot benefit from any defense that may be available only to said sole proprietorship.

Also, Appellant's argument that Appellee has not used the term "MEGA C" in its corporate name for so long a time to acquire a secondary meaning is misplaced. The doctrine of secondary meaning, as explained by the Supreme Court in *Philippine Nut Industry, Inc. v. Standard Brands, Inc.*,[4] presupposes that such term is a word or phrase originally incapable of exclusive appropriation for being generic, geographical or descriptive.

In determining whether the term "MEGA C" is generic, descriptive or suggestive, the settled rules in trademark law are instructive in this case, *viz*:

> Generic terms are those which constitute 'the common descriptive name of an article or substance', or comprise the 'genus of which the particular product is a species', or are 'commonly used as the name or description of a kind of goods', or 'imply reference to every member of a genus and the exclusion of individuating characters', or 'refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product', and are not legally protectable. On the other hand, a term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it 'forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is', or 'if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods,' or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination.
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> Suggestive terms are those which . . . require 'imagination, thought and perception to reach a conclusion as to the nature of the goods.' . . . . While suggestive marks are capable of shedding 'some light' upon certain characteristics of the goods or services in dispute, they nevertheless involve 'an element of incongruity,' 'figurativeness,' or 'imaginative effort on the part of the observer.'[5] They 'are words, pictures, or other symbols that suggest, but do not directly describe, something about the goods or services in connection with which they

[4] 65 SCRA 575 (1975).

[5] Societe des Produits Nestle, S.A., et al. vs. Court of Appeals, et al., G.R. No. 112012, 4 April 2001.

are used as marks';[6] as they merely give hint as to the quality or nature of the product, suggestive marks can thus be distinctive and are registrable.[7]

Independently, the word "MEGA" means a large number while the letter "C" is part of the alphabet. However, the term "MEGA C" is not found in the dictionary and is created by combining or putting together the word "MEGA" and the letter "C."

Such combination does not readily and directly describe or convey the characteristics, functions or qualities of Appellant and Appellee's distributing and marketing business. It does not clearly denote what goods or products Appellant and Appellee provide such that the consumer still has to exercise his powers of perception or imagination. Corollarily, the combination of "MEGA" and "C" to form part of Appellant's and Appellee's name required imagination, thought and perception. Accordingly, the term "MEGA C" is not generic or descriptive but a unique or coined word, and therefore, capable of exclusive appropriation.

Under paragraph 3 (b) of SEC Memorandum Circular No. 5, Series of 2008, the addition of one or more distinctive words shall not be allowed if the registered name is coined or unique, unless the board of directors of the subject corporation gives its consent to the applied name.

In the instant case, there is no showing that Appellee has permitted or consented to the use of the term "MEGA C" in Appellant's name. Accordingly, the addition of one or more distinctive words in Appellant's name should not be allowed as the term "MEGA C" is a coined or unique word.

Even assuming that the term "MEGA C" is not a coined or unique word, the Supreme Court, in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery Inc.*,[8] acknowledged that geographic or generic words are not, *per se*, subject to exclusive appropriation, however, the combination of words comprising as a trade name used in business is protected against infringement on matters related to the same business to avoid confusing or deceiving the public. Accordingly, insofar as matters related to distribution and marketing of medicines is concerned, the combination and arrangement of the term "Mega C" in Appellee's name is protected by law against infringement to avoid confusing or deceiving the public.

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[6] McCarthy's Desk Encyclopedia of Intellectual Property, 1991 Ed., p. 322.

[7] Vicente B. Amador, Trademarks Under the Intellectual Property Code 27 (1999 Edition), citing American Wire and Cable Co. vs. Director of Patents and Central Banahaw Industries, G.R. No. L-26557, February 18, 1970.

[8] G.R. No. 169504, 03 March 2010.

**WHEREFORE**, the instant Appeal is hereby **DENIED**. The Order of the Office of the General Counsel dated 25 May 2010 is hereby **AFFIRMED**.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department and the Economic Research & Information Department of the Commission for their information and appropriate action.

**SO ORDERED.**

12 September 2013, Mandaluyong City, Philippines.

**TERESITA J. HERBOSA**
Chairperson

**MA. JUANITA E. CUETO**
Commissioner

**MANUEL HUBERTO B. GAITE**
Commissioner

**ELADIO M. JALA**
Commissioner

**ANTONIETA F. IBE**
Commissioner