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

RAJAH TRAVEL CORPORATION,
Petitioner-Appellee,

- versus -

FLIGHT RAJA TRAVELS PRIVATE LIMITED,
Respondent-Appellant.
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SEC En Banc Case No. 07-16-409
Change of Corporate Name

DECISION

For the consideration of the En Banc is the Memorandum on Appeal filed on 20 July 2016 by FLIGHT RAJA TRAVELS PRIVATE LIMITED – PHILIPPINE BRANCH (FLIGHT RAJA TRAVELS), which seeks to reverse the **Order dated 24 June 2016 of the Commission's OFFICE OF THE GENERAL COUNSEL (OGC)**, as well as the Reply Memorandum filed on 15 August 2016 by RAJAH TRAVEL CORPORATION (RAJAH TRAVEL). The OGC directed FLIGHT RAJA TRAVELS to change its corporate name for being confusingly similar to that of RAJAH TRAVEL which has a prior right to use such name.

RELEVANT FACTS

FLIGHT RAJA TRAVELS is a foreign corporation, registered under the laws of India on 5 February 2007, with a **License to Transact Business in the Philippines** issued by the Commission on **8 June 2010**.[1] Its purpose is "to provide online and offline travel solutions, package tours, hotel bookings, transfers to the travel agents and direct customers in the Philippine market, and to provide travel related technology solutions to airlines, bus operators, ferry operators, hotel operators, and rail operators."[2]

RAJAH TRAVEL is a domestic corporation, registered on **21 October 1992**.[3] Its purpose is "to engage in the travel agency business and the promotion of tourism."[4]

On **8 February 2013**, RAJAH TRAVEL filed its Petition for Change of Corporate Name. It argued that:

(1) It acquired a prior right over the unique name "RAJAH TRAVEL"; and
(2) The name FLIGHT RAJA TRAVELS is confusingly similar to its own.

On **4 March 2013**, FLIGHT RAJA TRAVELS filed its Answer. It did not contest that the name "RAJAH TRAVEL" was registered earlier. Instead, it argued that:

(1) The use of a similar name is allowed if one or more distinctive words are added;
(2) The name "RAJAH TRAVEL" is generic and cannot be appropriated;
(3) The names of the parties are not confusingly similar.

FLIGHT RAJA TRAVELS also argued that "Respondent was originally [incorporated] in India. The branch's adoption of its head office's name is natural. xxx [RAJAH TRAVEL]

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[1] Company Reg. No. FS201008382
[2] FLIGHT RAJA TRAVELS' Application of a Foreign Corporation to Establish a Branch Office in the Philippines
[3] Company Reg. No. AS92007081
[4] RAJAH TRAVEL's Articles of Incorporation

cannot prevent [FLIGHT RAJA TRAVELS, India] from setting up [branches] using [its] duly-registered corporate name."[5]

On **24 June 2016**, after notice and hearing, the OGC issued the assailed Order, declaring that:

(1) RAJAH TRAVEL **acquired a prior right** over the name because
   a. RAJAH TRAVEL adopted it as early as its incorporation in 1992, whereas FLIGHT RAJA TRAVEL only obtained its License to Transact Business in 2010 and was only registered in India in 2007;
   b. "RAJAH TRAVEL" is a *unique* name which may be appropriated.

(2) FLIGHT RAJA TRAVELS is **confusingly similar** to RAJAH TRAVEL because:
   a. RAJAH TRAVEL and FLIGHT RAJA TRAVELS are both in the same industry, travel and tourism;
   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 RAJAH TRAVEL consents—and it does not consent.

(3) FLIGHT RAJA TRAVELS, despite being a branch of a foreign corporation, is bound by its **Undertaking to Change Corporate Name**.

On **20 July 2016**, FLIGHT RAJA TRAVEL filed the instant Memorandum on Appeal. Aside from reiterating its arguments, it stressed that **branches of foreign corporations are exempt from the rules on corporate name**, viz:

> The doctrine of prior adoption does not apply because [FLIGHT RAJA TRAVEL] is a foreign corporation under the laws of India, and the Corporation Code of the Philippines requires a Philippine branch office of a foreign corporation to maintain the same name as its foreign principal.[6] (Emphasis supplied)

On **15 August 2016**, RAJAH TRAVEL filed its Reply Memorandum. For the most part, it reiterated its arguments in the OGC case, stating that "xxx FLIGHT RAJA TRAVELS merely rehashed arguments which have already been passed upon by the OGC xxx."[7] It added that, under the SEC Rules,[8] "Findings of fact by the Operating Department shall not be disturbed by the Commission En Banc unless serious errors of fact have been committed."[9]

RAJAH TRAVEL also argued that "a Philippine branch office is not exempted from Section 18 of the Corporation Code, which prohibits the registration of a corporate name of it is identical or deceptively similar to an existing corporation. Otherwise, [FLIGHT RAJA TRAVEL]'s interpretation of the law would result in an absurd situation where a Philippine branch office has a better right over a domestic corporation that has acquired a vested right over a corporate name."[10] It added that:

> In fact, the Honorable Commission may take judicial notice of the fact that branch offices still have to undergo name reservation to preliminarily confirm if their proposed name is still available. A positive result from the name reservation does

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[5] Page 4 of Answer.
[6] Page 8 of Memorandum on Appeal.
[7] Page 32 of Reply Memorandum.
[8] Section 11-8 of the 2006 SEC Rules of Procedure.
[9] Id.
[10] Page 30 of Reply Memorandum.

> not mean that confusion with an existing corporation is no longer possible. Thus, **the branch office still has to execute an undertaking to change its corporate name** upon receipt of a notice or directive from the Honorable Commission that another corporation has acquired a prior right to the use of its name. Pursuant to this requirement, Appellant FLIGHT RAJA TRAVELS executed such undertaking in Paragraph 13 of its Application. (Emphasis supplied)

Hence this Appeal.

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:
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> 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)
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> 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
>
> **(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, RAJAH TRAVEL adopted its name as early as its incorporation on **21 October 1992**, while FLIGHT RAJA TRAVEL only obtained its License to Transact Business on **8 June 2010** and was only registered in India on **5 February 2007**.

Moreover, the name "RAJAH TRAVEL" is *unique*, not generic, and thus capable of appropriation. As correctly observed by the OGC:

> xxx "Rajah" means a male monarch and "Travel" means journey or trip. It is obvious that the two words are unrelated to one another. The phrase "Rajah Travel" is suggestive of superior travel and tourism service. Thus, the combination of the two makes the phrase unique with respect to the travel and tourism industry and, therefore, capable of being appropriated exclusively by [RAJAH TRAVEL].[11]

Therefore, having earlier adopted its unique name, RAJAH TRAVEL has a prior right over FLIGHT RAJA TRAVELS.

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 "RAJAH TRAVEL" is the dominant phrase in both of the parties' names and that "RAJA TRAVELS" is confusingly similar, despite the variance in spelling, because phonetically it is almost identical. As already mentioned, the word "RAJAH" is not necessarily related to "TRAVEL" and thus the combination is unique, leading an ordinary person to assume that RAJAH TRAVEL and FLIGHT RAJA TRAVEL are one and the same.

Moreover, the parties are engaged in the same line of business, **travel and tours**, which they both promote **through the internet**. RAJAH TRAVEL deals with both individual travelers and travel agencies. FLIGHT RAJA TRAVELS deals mostly with travel agencies, but is also authorized to transact with individual travelers. We note that "travel agents and direct customers in the Philippine market" is expressly stated in its purpose clause, meaning RAJAH TRAVEL and FLIGHT RAJA TRAVELS cater to substantially the same clientele.

Therefore, the name "FLIGHT RAJA TRAVELS" is confusingly similar to the registered name "RAJAH TRAVEL."

Not Exempted

FLIGHT RAJA TRAVELS has two arguments for exemption, to wit: (a) the SEC Guidelines on Corporate and Partnership Names allow the registration of a similar name, provided one or more distinguishing words are added; and (b) interpreting Section 18 of the Corporation Code, the rule on corporate names applies only to domestic corporations.

As to the **SEC Guidelines**, the OGC correctly ruled that in the case of unique or coined names, the later registrant of a similar name (FLIGHT RAJA TRAVELS), even with one or more distinguishing words added, must obtain the **consent** of the Board of Directors of the earlier registered corporation (RAJAH TRAVEL) to use a similar name, and the latter obviously does not consent to such use.

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[11] Page 6 of assailed Order.

As to **Section 18 of the Corporation Code**, we rule that the sentence "Where a change in a corporate name is approved, the Commission shall issue an amended ***certificate of incorporation*** under the amended name" is applicable to any entity registered with the Commission which executed an **Undertaking to Change Corporate Name**.

Note that **Section 5.1(c) of the Securities Regulation Code** grants the power to require amendments to "registration and licensing applications" without distinguishing between the various documents which grant a corporate name. For a domestic corporation, the corporate name is granted in the Certificate of Incorporation, while for a branch of a foreign corporation, the corporate name is granted in the License to Transact Business in the Philippines. **Section 5.1(n)** adds that the Commission may exercise implied, necessary, and incidental powers "to achieve the objectives and purposes of these laws."

FLIGHT RAJA TRAVELS' License to Transact Business in the Philippines authorizes it to transact under the corporate name stated therein. If a change of corporate name is ordered, and the losing party directed to abide by the Undertaking to Change Name, the amended name would necessarily be reflected in its License to do Business. **For the purpose of complying with an Undertaking to Change Name, a License to Transact Business is analogous to a Certificate of Incorporation.**

Therefore, a branch of a foreign corporation is not exempt from Section 18 and are bound, in any case, by their Undertaking to Change Corporate Name.

WHEREFORE, the 24 June 2016 Order of the OGC is hereby AFFIRMED.

SO ORDERED.

Pasay City, Philippines; 11September 2018.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE*
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

*On Official Business