Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

LILLI ANN D. FERNANDO ,
Complainant-Appellee,

versus

COMPANY REGISTRATION AND MONITORING DEPARTMENT, represented by Director Ferdinand B. Sales, and D'TOOTH DOCTORS CO.,
Respondent-Appellant.

SEC En Banc Case No. 08-14-343

ORDER

For consideration of this Commission is the Appeal of Lilli Ann D. Fernando from the decision of the Company Registration and Monitoring Department[1] denying her request for the registration of a corporation with the proposed business name, "**THE TOOTH DOCTOR, INC.**"

Appellant Lilli Ann D. Fernando[2] is a Dental Doctor by profession, and her dental clinic is located at the 3rd Floor, Robinson's Galleria, Ortigas Complex, with the business name of "**TOOTH DOCTOR, The (As Style)**" registered with the Department of Trade and Industry[3] on June 5, 1996. Appellant renewed her registration three more times. Her Certificates of Business Name Registration from the DTI show the following periods of registration:

From	Until
June 5, 1996	June 5, 2001
August 15, 2001	August 15, 2006
August 17, 2006	August 17, 2011
October 11, 2011	October 12, 2016

Appellant likewise applied for registration of her trademark for "THE TOOTH DOCTOR AND TOOTH DEVICE" with the Intellectual Property Office of the Philippines on July 17, 2008. The IPO approved the registration of the trademark on January 1, 2010, for a period of 10 years or until January 1, 2020.

[1] Hereafter, "CRMD."
[2] Hereafter, "appellant."
[3] Hereafter, "DTI."

Appellant claims that sometime in 2014, she made an initial inquiry with the Corporate Filing and Records Division[4] of the Commission regarding the availability of the name "**THE TOOTH DOCTOR, INC.**" The CFRD informed her that the name was not available for registration because the SEC's records show an existing registration of "Tooth Doctor, The" with the DTI. Through a letter dated June 27, 2014, appellant informed the SEC (through the Asst. Director of the Corporate Filing and Records Division) that she was the registered owner of the DTI registered business name, and requested the SEC to allow the registration of "The Tooth Doctor, Inc."

The SEC likewise found that there is an existing registration of the name of "D'Tooth Doctors Co." belonging to a dental professional partnership, registered with the SEC on November 20, 2008. In the partnership papers of "D'Tooth Doctors Co.,"[5] the partners listed are (a) Dr. Glaiza C. Ramos; and (b) Dr. Cyrill A. Tajanlangit.

Through counsel, appellant submitted a letter dated July 9, 2014 addressed to the CRMD to (a) allow the appellant to incorporate using the name "The Tooth Doctor, Inc.," and (b) that the partnership using the name "D'Tooth Doctors Co." be directed to immediately change its business name.

On July 24, 2014, through a letter of even date, the CRMD informed the appellant that her request was denied, citing Section 18 of the Corporation Code[6] and SEC Memorandum Circular No. 5, Series of 2008 as basis for the denial. Appellant received a copy of the July 24, 2014 letter on August 4, 2014.

Aggrieved, Appellant filed on August 18, 2014 her Notice of Appeal together with the Memorandum of Appeal.

On August 19, 2014, the Commission En Banc directed the appellees (CRMD, D'Tooth Doctors Co., and its partners) to submit their Reply Memoranda within ten days from receipt of the Order.

In compliance with the Order, the CRMD timely filed its Reply Memorandum on September 8, 2014.

The Commission finds that appellant's proposed name of "The Tooth Doctor" is indeed deceptively or confusingly similar to the already registered partnership name of "D'Tooth Doctors Co."

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[4] Hereafter, "CFRD."
[5] Hereafter, "appellee" or "appellee dental professional partnership."
[6] Corporation Code of the Philippines.

The issues to be resolved by the Commission are the following:

I. Whether the appellant, who has an earlier DTI registration, has the right to the use and register "The Tooth Doctor" as its corporate name despite the partnership name's registration of "D'Tooth Doctors Co.," with the SEC since 2008;

II. Whether the commission should order the partnership of "D'Tooth Doctors Co.," to change its name.

Discussion

Section 18 of the Corporation Code of the Philippines provides

> **Sec. 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.[7]

As the Supreme Court held in *Philips Export B.V. vs. Court of Appeals*,[8] 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
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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.

To implement the above provision, the Commission issued SEC Memorandum Circular No. 21, series of 2013 Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names. Pertinent provisions are presented as follows:

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[7] Emphasis supplied.
[8] 206 SCRA 457, 463 [1992]

3. (a) The name shall not be identical, misleading or confusingly similar to a corporate or partnership name registered with the Commission, or with the Department of Trade and Industry, in the case of sole proprietorships;

(b) If the name applied for is similar to that of a registered corporation or partnership, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name;

x x x

5. A tradename or trademark registered with the Intellectual Property Office may be used as part of the corporate or partnership name of a party other that its owner if the latter gives its consent to such use.

The Corporation Code's provision on corporate name seeks to avoid a situation wherein the corporation adopts at pleasure the name of another corporation, or that of another sole proprietor, resulting in confusion, difficulty in identifying the corporation and unfair competition, thereby opening the door to frauds and difficulties of administration and supervision.[9]

A side by side comparison of the appellant's DTI Registered Business name and the appellee dental professional partnership's registered name would reveal apparent confusion and similarity. The facts appearing in the case record also present the following relevant information:

Appellant	Appellee
"Tooth Doctor, The (As Style)"	**"D'Tooth Doctors Co."**
DTI Registered since June 5, 1996	Partnership Name registered with the SEC on November 20, 2008
Dental Services	Dental Services
IPO Registered Trademark in 2010	No information
No information	DOH[10] endorsement for the registration of the business name on November 17, 2008

[9] See generally, Red Line Transit vs. Rural Transit, 30 Phil. 549
[10] Bureau of Health Facilities and Services, Department of Health ("DOH – BHFS") Annex "2" of Appellee CRMD's Memorandum is an endorsement letter dated November 17, 2008 issued by Engr. Herminio G. Dionco, Director III, informing the SEC Corporate and Partnership Registration Division that the DOH –

Without a doubt, the two contending business names, namely (a) "Tooth Doctor, The (As Style);" and (b) "D'Tooth Doctors Co.," are indeed misleading and confusingly similar, especially since both businesses are owned by Dental Doctors and engaged in dental services. Further, no distinctive word has been added to the name of the appellee's partnership to adequately differentiate its name from that of the appellant's DTI registered trade name.

The issue to be resolved is who among the contending parties has a prior right to the business name.

On this issue, the Commission finds that the appellant has acquired the right to the use of the business name "Tooth Doctor, The (As Style)" as early as June 5, 1996. The appellant's business name, therefore, is entitled to protection by law, and can no longer be appropriated by another individual or entity throughout the duration of its registration.

Thus, when the appellee-dental professional partnership registered its partnership name of "D'Tooth Doctors Co." on November 20, 2008, the appellant already acquired a prior right to use of the name "Tooth Doctor, The (As Style)" and was entitled to legal protection against another party making use of a name that is similar, misleading, or confusing as regards appellant's DTI Registered Business Name.

CRMD argues that the appellant has the burden of proving that it had a valid and existing DTI Registration on November 20, 2008, when the CRMD approved the registration of the appellee dental partnership's name. After a review of appellant's Memoradum of Appeal, the Commission finds that the appellant satisfactorily proved that as early as June 5, 1996, the appellant registered its right to use the name "Tooth Doctor, The (As Style)" continuously until 2016[11] since all the renewals were done within the three month period from the expiration of each five-year period of registration.

For guidance, the Commission cites Section 15 of SEC Memorandum Circular No. 14-2000, pertinent portions of which provide:

> In implementing Section 18 of the Corporation Code of the Philippines (BP 68), the following revised guidelines in the approval of corporate and

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BHFS interposes no objection to the application for the business name/permit being applied for by the said corporation.

[11] The last DTI Registration in the case record is for the period from October 11, 2011 until October 12, 2016

partnership names are hereby adopted for the information and guidance of all concerned:

xxx

15. Registrant corporations or partnership shall submit a letter undertaking to change their corporate or partnership name in case another person or firm has acquired a prior right to the use of the said firm name or the same is deceptively or confusingly similar to one already registered unless this undertaking is already included as one of the provisions of the articles of incorporation or partnership of the registrant.

In the case of appellee dental professional partnership, Article IX of its Articles of Partnership states, to wit:

> Article IX. That the partners undertake to change the name of the partnership immediately upon receipt of notice or directive from the Securities and Exchange Commission that another partnership, corporation, or person has acquired a prior right to the use of the name or that the name has been declared as misleading, deceptive, confusingly similar to a registered name, or contrary to public morals, good customs, or public policy.

The appellant has adequately proved that she has acquired a prior right to the use of the name. Consequently, this Commission rules that the appellee dental professional partnership be directed to change its partnership name immediately upon receipt of the Commission's notice or directive.

Parenthetically, since the appellant has acquired the right to use her registered business name of "Tooth Doctor, The (As Style)," she likewise has the right to permit an applicant corporation to the use of her business name, and to waive the protection of the law against the use of her business name in favor of the applicant corporation. To formalize the appellant's express approval for the applicant corporation to use "The Tooth Doctor, Inc.," (which is similar to her DTI Registered Business Name), the appellant is to submit a notarized affidavit with the CRMD.

WHEREFORE, premises considered, the instant appeal is hereby granted. Consequently, the Company Registration Monitoring Department shall:

(A) Direct "D'Tooth Doctors Co.," a professional partnership between (i) Dr. Glaiza C. Ramos; and (ii) Dr. Cyrill A. Tajanlangit, to change

its partnership name immediately upon receipt of the Commission's notice; and

(B) Upon receipt of a notarized affidavit authorizing the use of her DTI Registered name, appellant Lilli Ann D. Fernando's applicant corporation be permitted to use the corporate name "The Tooth Doctors, Inc."

Let a copy of this Order be furnished the Corporate Filing and Records Division and the Company Registration and Monitoring Department for proper notation and action.

SO ORDERED.

Pasay City, Philippines, 16 January 2018.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO*
Commissioner

EMILIO B. AQUINO
Commissioner

*On Official Business