Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

GENTRI MEDICAL CENTER AND HOSPITAL INC.,
Petitioner-Appellee,

-versus-

SEC *En Banc* Case No. 09-13-301

GENTRI DOCTORS MEDICAL CENTER, INC.
Respondent-Appellant.
x----------x

DECISION

Before the Commission *En Banc* is an *Appeal*[1], filed on 19 September 2013, by GENTRI DOCTORS MEDICAL CENTER, INC. (*Respondent-Appellant*) under Rule XI of the 2006 Rules of Procedure of the Securities and Exchange Commission (2006 Rules) assailing the *Decision* of the Office of the General Counsel (OGC) in SEC Case No. 06-11-346, granting the *Petition*[2] filed by GENTRI MEDICAL CENTER AND HOSPITAL INC. (*Petitioner-Appellee*) and directing the *Respondent-Appellant* to change or modify its corporate name by amending its Articles of Incorporation and deleting the word "GENTRI".

The parties to this case are medical institutions.

The *Petitioner-Appellee* was incorporated with the Commission on **14 January 2011** under SEC Registration No. CS201100524.[3] Its primary purpose is to establish, own, manage and maintain a hospital or hospitals, medical and clinical laboratories and such other enterprises which may have similar or analogous undertakings or dedicated to services in connection therewith, subject to the condition that purely professional medical and surgical services shall be performed by duly qualified physicians or surgeons who may or may not be connected with the corporation and whose services shall be freely and individually contracted by the patients.[4] Its principal office is located in Brgy. Manggahan, General Trias, Cavite.[5]

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[1] *Memorandum on Appeal* dated 18 September 2013 and attached to the *Notice of Appeal* on even date, Records, p. 67.
[2] Dated 13 April 2011.
[3] Annex "A", Petition, *Ibid.*
[4] Second Article of the Articles of Incorporation of the Petitioner-Appellee.
[5] Third Article of the Articles of Incorporation of the Petitioner-Appellee.

The *Respondent-Appellant*, on the other hand, was incorporated with the Commission on **30 March 2011** under SEC Registration No. CS201105297.[6] Its primary purpose is to establish, operate, own, manage and maintain a hospital or hospitals, medical and clinical laboratories and such other enterprise which may have similar, related or analogous undertakings or dedicated to services in connection therewith, subject to the condition that purely professional medical and surgical services shall be performed by duly qualified physicians or surgeons who may or may not be connected with the corporation and whose services shall be freely and individually contracted by the patient.[7] Its principal office is located in Governor's Drive, Manggahan, General Trias, Cavite.[8]

Discovering that *Respondent-Appellant* has reserved its corporate name with the Commission, the *Petitioner-Appellee* filed with the OGC the *Petition* praying for the cancellation and disallowance of the *Respondent-Appellant's* corporate registration or otherwise ordered to change its corporate name.

The OGC decided in favor of the *Petitioner-Appellee* and rendered judgment on 22 August 2013, with the following dispositive portion:

> "**WHEREFORE,** premises considered, the instant Petition is hereby **GRANTED**. Respondent GENTRI DOCTORS MEDICAL CENTER, INC. is hereby **DIRECTED TO CHANGE OR MODIFY** its corporate name by amending its Articles of Incorporation and deleting the word "GENTRI" within thirty (30) days from receipt of this Order. Respondent is directed to file a compliance report within the said 30-day period. Failure to comply may constitute indirect contempt which will be punished accordingly, and may be a ground for the revocation of respondent's Certificate of Incorporation.
>
> Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for proper notation and action.
>
> **SO ORDERED."**

Aggrieved, *Respondent-Appellant* filed the instant *Appeal*, raising the following errors:

> (1) the *Petition* should have been denied as the claims and allegations of the *Petitioner-Appellee* were not proven, substantiated and established;

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[6] *Answer*, Annex "4".
[7] Second Article of the Articles of Incorporation of the *Respondent-Appellant*
[8] Third Article of the Articles of Incorporation of the *Respondent-Appellant*

(2) there is no justification to require the *Respondent-Appellant* to change or modify its corporate name;

(3) "Gentri" should not have been considered a coined term; and

(4) the *Decision* directing the *Respondent-Appellant* to change or modify its corporate name should be reckoned not from the receipt of the assailed *Decision* but from the date the same becomes final and executory.

The *Petitioner-Appellee*, on the other hand, argues, in its *Reply Memorandum*,[9] dated 11 October 2013, that there are no legal and factual grounds to merit the reversal of the Decision of the OGC as *Petitioner-Appellee* has complied with all the requisites under the law for the protection and exclusive use of its corporate name.

On 24 August 2014, the *Petitioner-Appellee*, filed an *Urgent Second Motion for Early Resolution*[10], dated 25 July 2014, alleging that the damage and evil sought to be avoided has finally happened. This is due to the report of Doris Bigornia, on 16 July 2014, during ABS CBN's TV Patrol program that a child, who sustained wounds in the head after a concrete wall fell on him, was allegedly brought to the *Petitioner-Appellee's* hospital which, unfortunately, could only manage to put a bandage on the child's head but refused to give further medical attention. As a result, the life of the child was lost. The *Petitioner-Appellee* asserts that the problem with Doris Bigronia's news report is that it was wrong. The child was never brought to its hospital but to the *Respondent-Appellant's*.

On 29 September 2014, the *Respondent-Appellant* filed an *Appearance/Supplemental/Reply Memorandum*[11], dated 27 September 2014, substantially reiterating the allegations and arguments in its *Memorandum on Appeal* and attaching additional pieces of documentary evidence pertaining to Certificates of Incorporation of several companies using the word "Gentri" as part of their corporate names.

Hence, the issues to be resolved are as follows:

(1) whether or not the *Petition* should be granted on the basis of the claims and allegations of the *Petitioner-Appellee*;

(2) whether or not there is a need to require the *Respondent-Appellant* to change or modify its corporate name for being confusingly similar to the *Petitioner-Appellee's* corporate name;

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[9] Filed on 11 November 2013, Records, p. 98.
[10] Records, p. 120.
[11] Records, p. 311.

(3) whether or not the OGC erred in finding that "Gentri" is a coined term; and

(4) whether or not the OGC erred when it directed the *Respondent-Appellant* to change or modify its corporate name.

Before proceeding with the substantial issues, we first dispose of the procedural issue. At the onset, it is enlightening to quote the assailed *Decision* of the OGC, which declares:

> "Lastly, as correctly pointed out by the respondent, the Motion to File Rejoinder violates the Rules since it is akin to a motion for extension of time to file pleadings which is prohibited under Section 3-6, Rule III of the Rules."

Stated otherwise, the *Respondent-Appellant,* despite being cognizant of the prohibited pleadings under the 2006 Rules as well as the OGC's Decision, still filed the said *Appearance/Supplemental/Reply Memorandum* which is akin to a *Motion for Leave to Amend Pleading*. Thus, the Commission must expunge from the records *Respondent-Appellant's Appearance/Supplemental/Reply Memorandum* for being a prohibited pleading.

We now resolve the substantial issues. Relative to the first issue, the *Respondent-Appellant* contends that the allegations in the *Petition* were never substantiated or proven and that no affidavit, competent or admissible evidence was presented or offered by the *Petitioner-Appellee*.

It is suffice to state that Section 1, Rule 129 of the *Revised Rules on Evidence* provides:

> "Rule 129
>
> WHAT NEED NOT BE PROVED
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> SECTION 1. Judicial notice, when mandatory. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the law of nature, the measure of time, and the geographical divisions."

In connection thereto, Section 1-4, Rule I of the 2006 Rules provides:

> "SEC 1-4. Nature of Proceedings. – Subject to the requirements of due process, the proceedings before the Commission shall be summary in nature and the technical rules of evidence used in the regular courts shall, whenever practicable, be suppletory to these rules.

Contrary to the *Respondent-Appellant's* assertion, the foregoing provisions establish the rule that the Commission shall take judicial notice of the official acts of the executive department of the Philippines, without the introduction of evidence. In the instant case, the Commission is an agency of the Department of Finance which, in turn, is part of the Executive Department of the Philippines. The Commission's official acts, therefore, should be given judicial notice. In other words, it is mandatory for the Commission to recognize its own official acts and issuances like the *Petitioner-Appellee's* Certificate of Incorporation dated **14 January 2011,** as well as the *Respondent-Appellant's* Certificate of Incorporation dated **30 March 2011.** Thus, the *Petitioner-Appellee,* being a prior registrant of its corporate name, has satisfied the first requisite of Section 18 of the Corporation Code which provides:

> "(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." [12]

As to the second issue, the *Respondent-Appellant* avers that the corporate names of the parties are not similar to such an extent that confusion to the public is likely to occur. This hardly merits consideration.

We agree with the *Petitioner-Appellee* when it showed, in its *Urgent Second Motion for Early Resolution,* that actual confusion on the *Petitioner-Appellee's* corporate name has actually happened. This was when Doris Bigornia, on 16 July 2014, reported on TV Patrol that a patient was brought to *Petitioner-Appellee's* hospital. However, *Petitioner-Appellee* presented evidence[13] showing that the patient was in fact brought to

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[12] *Industrial Refractories Corporation of the Philippines v. Court of Appeals, et al.*, G.R. No. 122174, 3 October 2002, citing *Philips Export B.V., et al. v. Court of Appeals, et al.*, G.R. No. 96161, 21 February 1992

[13] Blotter dated 16 July 2014, Records, p. 109

Respondent-Appellant's hospital. This indicates that the corporate names of the parties are confusingly similar to each other so as mislead a person of ordinary care and discretion in identifying the hospital that refused admittance of the patient who died. The confusion in corporate names was aggravated by the fact that parties are engaged in the same line of business, which is the operation and management of hospital. Certainly, in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*[14], it was held that the "likelihood of confusion is higher in cases where the business of the one corporation is the same or substantially the same as that of another corporation."

Besides, it is unnecessary to show that anyone had actually been misled by similarity in corporate names. It is sufficient that the use of corporate name is likely to produce deception or confusion. In this case, the public will likely be confused as to which hospital they want to go to considering that the buildings are located at around five hundred (500) meters apart from each other[15]. Thus, the *Respondent-Appellant's* corporate name is confusingly similar to that of the *Petitioner-Appellee* which, according to the OGC, is the prior registrant of its corporate name.

As to the third issue, *Respondent-Appellant* maintains that "Gentri" is not a coined term, as it is a popular term used by residents of General Trias, Cavite to address their town. The *Respondent-Appellant* further points out that "Gentri" should be considered a geographical term which is incapable of exclusive appropriation.

In determining whether the term "Gentri" is geographic, it is appropriate to re-examine first the settled rule in trademark law on generic, descriptive and suggestive terms, to wit:

> "**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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[14] G.R. No. 169504, March 3, 2010
[15] Paragraph 36, Reply Memorandum, Records, p. 89

> **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.'[16] 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 are used as marks';[17] as they merely give hint as to the quality or nature of the product, **suggestive marks can thus be distinctive and are registrable**."[18]

In the instant case, the term "Gentri" is not generic in that it does not particularly refer to the basic or inherent nature of the medical services being provided by *Petitioner-Appellee*; neither is it descriptive in the sense that it does not clearly convey an immediate idea of what *Petitioner-Appellee's* services are. The term "Gentri" is likewise not suggestive since the term will neither shed some light nor give a hint as to services being offered.

Now, as to *Respondent-Appellant's* assertion that the term "Gentri" in the *Petitioner-Appellee's* corporate name was used to identify the place or geographic location of General Trias, Cavite. We cannot take judicial notice of the same. This is because the term "Gentri", just as it is, cannot directly and exclusively be attributed as a contraction of the town of General Trias in Cavite where the parties have set up their business. Furthermore, no evidence was presented by the parties showing that, indeed, *Petitioner-Appellee* used "Gentri" as an abbreviation of General Trias, Cavite. Conversely, *Petitioner-Appellee's* use of the term "Gentri" may be considered as a contraction of some other words like gentrification or gentry.

Moreover, a unique corporate name was formed when "Gentri" is used alongside the other words in *Petitioner-Appellee's* corporate name in the particular order or arrangement in which they appear. In *Coffee Partners, Inc.*, the Supreme Court 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 medical institution is concerned, the combination and arrangement of the words "Gentri Medical Center and Hospital" in *Petitioner-Appellee's* name is protected by law against infringement to avoid confusing or deceiving the public. In fact, it is more reasonable to conclude that *Petitioner-Appellees* choice of the term "Gentri" was arbitrary and fanciful and not made on account of its business location. Therefore, we agree with the findings

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[16] Societe des Produits Nestle, S.A., et al. vs. Court of Appeals, et al., G.R. No. 112012, 4 April 2001.
[17] McCarthy's Desk Encyclopedia of Intellectual Property, 1991 Ed., p. 322.
[18] Vicente B. Amador, Trademarks Under the Intellectual Property Code 27 (1999 Edition), citing American Wire and Cable Co. vs. Director of Patents and Central Bananaw Industries, G.R. No. L-26557, February 18, 1970.

of the OGC that the term "Gentri" is a coined term with respect to *Petitioner-Appellees* business.

All of the foregoing considered, we need not belabor the fourth issue raised by *Respondent-Appellant*. Certainly, the OGC has not erred when it ordered *Respondent-Appellant* to change its corporate name despite the fact that the assailed *Decision* has not yet attained finality. The OGC, in so doing, merely compelled *Respondent-Appellant* to abide by one of the SEC Guidelines[19] in the approval of partnership and corporate names, namely its undertaking and willingness to change its corporate name in the event another person, firm, or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED**. The *Decision* dated 22 August 2013 of the Office of the General Counsel is hereby **AFFIRMED**.

SO ORDERED.

Mandaluyong City, 23 April 2015.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

[19] SEC Memorandum Circular No. 05-08, series of 2008