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

PROGRESSIVE RURAL BANK, INC.,
Petitioner-Appellee,

SEC En Banc Case No. 10-17-431

-versus-

PROGRESSIVE BANK, INC. UNDER NAME PROGRESSIVE A RURAL BANK,
Respondent-Appellant.
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DECISION

Before the Commission *En Banc* is the *Appeal* dated 14 September 2017 filed on 05 October 2017 by Respondent-Appellant PROGRESSIVE BANK, INC., UNDER NAME PROGRESSIVE A RURAL BANK (PBI-PRB), seeking the reversal and setting aside of the Order of the Commission's Company Registration and Monitoring Department (CRMD) dated 02 August 2017 (the "Assailed Order") which granted Appellee Progressive Rural Bank, Inc.'s (Appellee PRBI) Verified Petition for change of name against PBI-PRB.

RELEVANT FACTS

On 5 December 1974, the Commission issued the Certificate of Incorporation of the Rural Bank of Balasan (Iloilo) Inc. (RBBI), with SEC Registration No. 59053. Article SECOND of RBBI's Articles of Incorporation states that the purposes for which it was formed are "*to carry and engage in the business of extending rural credit to small farmers and tenants and to deserving rural industries or enterprises*", among others.

On 21 July 1997, Appellee PRBI was issued a Certificate of Incorporation by the Commission with SEC Registration No. A1997-10874. Appellee PRBI's principal office address is at Barangay Luta Norte, Malvar, Batangas.

On 04 August 2003, the Commission approved the amendment of RBBI's Articles of Incorporation effecting, among others, a change of its corporate name to PROGRESSIVE BANK, INC. UNDER NAME PROGRESSIVE A RURAL BANK.

Appellee PRBI questioned and opposed the use by Appellant PBI-PRB of the word "Progressive" as part of its corporate name, alleging that the same

constitutes a violation of Section 18 of Batas Pambansa Blg. 68 (the "Corporation Code of the Philippines"). Appellee PRBI thus filed a Verified Petition dated 1 June 2015 (the "Petition") praying that an order be issued directing Appellant PBI-PRB to change its corporate name on the ground that it is identical with, or confusingly similar to Appellee PRBI's corporate name.

In its Petition, Appellee PRBI alleged that it has acquired a prior right to its corporate name by virtue of the fact that it was able to secure a certificate of registration for the same as early as 21 July 1997, ahead of Appellant PBI-PRB. Moreover, Appellee PRBI alleged that the corporate name of Appellant PBI-PRB is identical and confusingly or deceptively similar to that of Appellee PRBI in view of its use of the words "PROGRESSIVE", "BANK", and "INC.", and the fact that both entities are engaged in the same line of business i.e. banking business.

On 10 August 2015, Appellant PBI-PRB filed its Answer arguing that Appellee PRBI cannot appropriate the use of the word "Progressive" to the exclusion of others on the ground that the same is generic. Appellant PBI-PRB further alleged that the use of the word "Rural" as part of its corporate name distinguishes it from Appellee PRBI.

In an Order dated 2 August 2017, the Company Registration and Monitoring Department (CRMD), finding that the use of the word "Progressive" by Appellant PBI-PRB violates Section 18[1] of the Corporation Code, granted the Petition of Appellee PRBI and directed Appellant PBI-PRB to change or modify its corporate name to one which is not identical with, and deceptively or confusingly similar to the corporate name of the Appellee PRBI.

Hence, this Appeal.

ISSUE

Whether the use of the word "PROGRESSIVE" as part of Appellant PBI-PRB's corporate name violates Section 18 of the Corporation Code that warrants the change of Appellant PBI-PRB's corporate name.

[1] Section 17 of the Revised Corporation Code.

RULING

After a careful review of the facts borne by the records of the case and the evidence submitted, We do not find any compelling reason to disturb the finding of CRMD.

Section 18 of the Corporation Code[2] expressly provides:

> "Section 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." (Emphasis supplied)

To fall within the prohibition of the law, two (2) requisites must be proven, to wit:

(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.[3]

There is an important distinction between a corporate name and an individual name in respect to the manner of their acquisition. A corporation acquires its name by choice and is thus accorded a wide latitude and discretion to create or adopt one that is unique (and not one that is already appropriated by a senior corporation), while an individual's name is thrust upon him.[4] It is in this context that the use of corporate names are regulated, and corporations are required to specifically undertake to modify their names if the same are found to be confusing, deceptive or violative of existing laws. The reason for the prohibition of using a word(s) which is identical with, or deceptively/confusingly similar with a registered corporate name was explained by the Supreme Court in the case of *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus*[5], thus:

> "Parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a nonprofit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented

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[2] Section 17 of the Revised Corporation Code.
[3] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et al., GR No. 122174, October 3, 2002 citing Philips Export B.V. vs. Court of Appeals 206 SCRA 457, 463 [1992].14
[4] Standard Oil Co. of N.M. vs Standard Oil Co. of Cal., 13 U.S.P.Q. 76
[5] G.R. No. 137592, December 12, 2001

> by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.
>
> At any rate, the SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public."

Applying the measure laid down by the Supreme Court in the aforementioned case, the Commission finds that Appellant PBI-PRB's use of the word "PROGRESSIVE" made its corporate name confusingly similar to Appellee PRB's corporate name.

(A) Appellee PRB acquired Prior right over the word "PROGRESSIVE"

In *Philips Export B.V. et al. v. Court of Appeals et al.,*[6] the Supreme Court categorically ruled that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. The priority of adoption rule which is used to determine who among two or more entities are entitled to the use of a corporate name takes into consideration the registration date when the parties started using their respective corporate names.[7]

In the instant case, Appellee PRBI was incorporated on 21 July 1997, the date when it started using the corporate name PROGRESSIVE RURAL BANK, INC. Through the passage of time and the natural development of its trade in the banking industry, Appellee PRBI's corporate name acquired goodwill.[8]

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[6] G.R. No. 96161, 21 February 1992.

[7] See Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc., G.R. No. 184008, [August 3, 2016]

[8] "Today, the trademark is not merely a symbol of origin and goodwill; it is often the most effective agent for the actual creation and protection of goodwill. It imprints upon the public mind an anonymous and impersonal guaranty of satisfaction, creating a desire for further satisfaction. In other words, the mark actually sells the goods. The mark has become the "silent salesman," the conduit through which direct contact between the trademark owner and the consumer is assured. It has invaded popular culture in ways never anticipated that it has become a more convincing selling point than even the quality of the article to which it refers. In the last half century, the unparalleled growth of industry and the rapid development of communications technology have enabled trademarks, tradenames and other distinctive signs of a product to penetrate regions where the owner does not actually manufacture or sell the product itself. Goodwill is no longer confined to the territory of actual market penetration; it extends to zones where the marked article has been fixed in the public mind through advertising. Whether in the print, broadcast or electronic communications medium, particularly on the Internet, advertising has paved the way for growth and expansion of the product by creating and earning a reputation that crosses over borders, virtually turning the whole world into one vast marketplace. (Mirpuri v. Court of Appeals, G.R. No. 114508, [November 19, 1999], 376 PHIL 628-669)

On the other hand, it appears from the records of the case that Appellant PBI-PRB which originally used the corporate name Rural Bank of Balasan (Iloilo) Inc., only started using the name PROGRESSIVE BANK, INC. UNDER NAME PROGRESSIVE A RURAL BANK on 04 August 2003, or six (6) years after Appellee PRBI has registered its corporate name. Thus, being a prior registrant and the first to use the word "PROGRESSIVE" as part of its corporate name, the Appellee PRBI has clearly acquired the prior right to the use of the corporate name under the principle of *prius tempore potior jure* or first in time, stronger in right.

(B) <u>Appellant PBI-PRB's corporate name is confusingly similar to Progressive Rural Bank, Inc.</u>

In its Appeal, Appellant PBI-PRB alleged that the word "Progressive" is generic/descriptive and is thus, not susceptible of exclusive appropriation. Appellant PBI-PRB posits that for banks or financial institutions where the relationship with clients is fiduciary in nature, the rule on confusing similarity should be relaxed because there is no danger that customers/clients will be confused as to their bank's identity. Appellant PBI-PRB is practically suggesting that under Section 18 of the Code, a bank or financial institution in the provinces or regions can use the names of registered corporate names such as Metropolitan Bank, East West Bank, Land Bank or China Bank because clients will not confuse the rural banks with the previously registered banks.

Appellant PBI-PRB's argument fails to convince.

In determining if the second requirement is present i.e. existence of confusing similarity in corporate names, jurisprudence states that the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. It is also settled that proof of actual confusion between the two corporate names is not necessary, it being sufficient that confusion is probable or likely to occur.[9]

In the instant case, it is evident that the word "PROGRESSIVE" is the dominant word in the corporate names of both Appellee PRBI and Appellant PBI-PRB. In the light of the fact that both Appellee PRBI and Appellant PBI-PRB are engaged in the business of providing banking and financial services, the Commission finds that the use by Appellant PBI-PRB of the word "PROGRESSIVE" as part of its corporate name renders the same identical with and/or confusingly similar to Appellee PRB, and that the same will likely confuse the public that they are related or are operated by the same company.

[9] Philips Export B.V. et al. v. Court of Appeals et al., G.R. No. 96161, 21 February 1992

In *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*[10], it was held that:

> "The likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation.
>
> xxx xxx xxx
>
> Respondent has acquired an exclusive right to the use of the trade name "SAN FRANCISCO COFFEE & ROASTERY, INC." since the registration of the business name with the DTI in 1995. Thus, respondent's use of its trade name from then on must be free from any infringement by similarity."

Appellant PBI-PRB's argument that the word "PROGRESSIVE" is generic and thus justifies its use as part of its corporate name does not persuade. In determining whether the word "PROGRESSIVE" is generic, descriptive or suggestive, the settled rules in trademark law are instructive in this case, *viz*:

> "A generic term, the weakest class of marks, refers to "a particular genus or class of which an individual article or service is but a member," and "suggests the basic nature of articles or services." *WSM,* 724 F.2d at 1325 (citing *Soweco, Inc. v. Shell Oil Co.,* 617 F.2d 1178, 1183 (5th Cir.1980)). Because generic terms are "in the public domain and available for all to use," *Cellular Sales, Inc. v. Mackay,* 942 F.2d 483, 486 (8th Cir.1991), they "are precluded from trademark protection under any circumstances." *Clipper Cruise Line, Inc. v. Star Clippers, Inc.,* 952 F.2d 1046, 1047 (8th Cir.1992). Generic terms are ones commonly used as the name of a kind of goods. *Liquid Controls Corp. v. Liquid Control Corp.,* 802 F.2d 934, 936 (7th Cir.1986). Since "steakburger" has not been successfully registered as a trademark, Steak n Shake bears the burden of proving that it is not a generic term. *See Anheuser-Busch, Inc. v. Stroh Brewery Co.,* 750 F.2d 631, 638 (8th Cir.1984)."[11]

> "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. They are words, picture 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, as they merely give hint as to the quality or nature of the product, suggestive marks can thus be distinctive and are registrable."[12]

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[10] G.R. No. 169504, March 3, 2010.

[11] Steak N Shake Co. v. Burger King Corp., 323 F. Supp. 2d 983 (E.D. Mo. 2004); Accessed at https://law.justia.com/cases/federal/district-courts/FSupp2/323/983/2492763/

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

In and by itself, the word "PROGRESSIVE" does not readily and directly suggest banking services; neither does it describe or convey the characteristics, functions or qualities of Appellee PRBI and Appellant PBI-PRB's banking business. The word "PROGRESSIVE" does not also denote or describe the nature of the services provided by Appellee PRBI and Appellant PBI-PRB, such that the public needs to exercise their imaginative faculties to relate the word to Appellee PRBI or Appellant PBI-PRB. On the basis thereof, the word "PROGRESSIVE" is not generic or descriptive, but a unique or coined word which is capable of exclusive appropriation.

Assuming *ex gratia argumenti* that the word "PROGRESSIVE" is not a coined or unique word, the Supreme Court in the case of *Coffee Partners Inc. v. San Francisco Coffee & Roastery, Inc.*[13] ruled 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, in the banking business, the use of the word "PROGRESSIVE" as part of Appellee PRBI's corporate name is protected by law against infringement to avoid confusing or deceiving the public. The public is likely to be misled into thinking that PROGRESSIVE BANK, INC. UNDER THE NAME PROGRESSIVE A RURAL BANK is connected with Appellee PRB, thus, causing confusion in the market.

In *GSIS Family Bank-Thrift Bank v. BPI Family Bank*[14], a case where the facts are in all fours with the instant case, the Supreme Court sustained the Decision of the SEC En Banc finding the words "Family Bank" in *GSIS Family Bank-Thrift Bank* deceptively or confusingly similar to *BPI Family Bank's corporate name, and upheld the ruling of the* Court of Appeals that the approvals by the BSP and by the DTI of petitioner's application to use the name "GSIS Family Bank" do not constitute authority for its lawful and valid use, emphasizing that it is the SEC which has absolute jurisdiction, supervision and control over all corporations, thus:

> "On the first point (a), the words "Family Bank" present in both petitioner and respondent's corporate name satisfy the requirement that there be identical names in the existing corporate name and the proposed one. Respondent cannot justify its claim under Section 3 of the Revised Guidelines in the Approval of Corporate and Partnership Names, to wit:
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> '3. The name shall not be identical, misleading or confusingly similar to one already registered by another corporation or partnership with the Commission or a sole proprietorship registered with the Department of Trade and Industry.'

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[13] G.R. No. 169504, March 3, 2010.
[14] G.R. No. 175278, 23 September 2015.

> If the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered.
>
> Section 3 states that if there be identical, misleading or confusingly similar name to one already registered by another corporation or partnership with the SEC, the proposed name must contain at least one distinctive word different from the name of the company already registered. To show contrast with respondent's corporate name, petitioner use the words "GSIS" and "thrift". But these are not sufficiently distinct words that differentiate petitioner's corporate name from respondent's. While "GSIS" is merely an acronym of the proper name by which petitioner is identified, the word "thrift" is simply a classification of the type of bank that petitioner is. Even if the classification of the bank as "thrift" is appended to petitioner's proposed corporate name, it will not make the said corporate name distinct from respondent's because the latter is likewise engaged in the banking business."

(C) **Appellant PBI-PRB's corporate name is not distinguishable from Appellee's corporate name, and its use is contrary to the RCC and existing rules and regulations.**

Section 17 of Republic Act No. 11232 otherwise known as the "Revised Corporation Code" (RCC) provides that "*no corporate name shall be allowed by the Commission if it is not distinguishable from that already reserved or registered for the use of another corporation, or if such name is already protected by law, or when its use is contrary to existing law, rules and regulations.*"

A corporate name is considered distinguishable and can be allowed if the same is clear enough to be easily recognized or identified as different[15] from a registered or protected corporate name. In the instant case, a comparison of the corporate names under consideration will readily reveal that Appellant's "PROGRESSIVE BANK, INC. UNDER THE NAME PROGRESSIVE A RURAL BANK" is practically identical with Appellee's PROGRESSIVE RURAL BANK, INC. The use by Appellant PBI-PRB's of the dominant word "PROGRESSIVE" as part of its corporate name is likely to confuse the public that it is an affiliate of, or connected with Appellee PRBI considering the fact that they are both engaged in the business of providing banking and related services.

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[15] See https://www.google.com/search?client=safari&rls=en&q=distinguishable+meaning&ie=UTF-8&oe=UTF-8

The prohibition from using corporate names that are not distinguishable from those that are already reserved to, or are being used by registered corporations is intended to effectively implement the policy of ensuring the avoidance of fraud upon the public which would have the occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations."[16]

On the basis thereof, the Commission finds that the continued use by Appellant PBI-PRB of the word "PROGRESSIVE" as part of its corporate name violates Section 17 of the RCC because the public is likely to associate the same with Appellee PRBI, to the damage and prejudice not only of the latter, but more importantly, of the public who is likely to be deceived as a consequence thereof.

Finally, Par. 3(b) of SEC Memorandum Circular No. 21, series of 2013 (MC 21) requires that if a name applied for is similar to that of a registered corporation, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name. However, 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 or the subject corporation gives its consent to the applied name. In the light of the finding of the CRMD that the word "PROGRESSIVE" is not generic, Appellant PBI-PRB was required to secure the consent of the board of directors of Appellee PRBI for it to validly use the same.

In the instant case, there is no showing that Appellee PRBI has permitted or consented to the use of the word "PROGRESSIVE" as part of Appellant PBI-PRB's corporate name. Accordingly, CRMD was correct in ruling that Appellant PBI-PRB cannot validly use the word "PROGRESSIVE" as part of its corporate name. Appellant PBI-PRB's use of the word "PROGRESSIVE" without the consent of Appellee PRBI is also proscribed under Section 17 of the RCC it violated MC 21 which is considered a regulation of the Commission.

WHEREFORE, premises considered, the instant *Appeal* is hereby **DENIED** for lack of merit. The Assailed Order of the Company Registration and Monitoring Department granting Appellee PRBI's Verified Petition for change of name against Appellant PBI-PRB is hereby **AFFIRMED.**

SO ORDERED.

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[16] De La Salle Montessori International of Malolos, Inc. v. De La Salle Brothers, Inc. (G.R. No. 205548, February 7, 2018).

Pasay City, Philippines, 28 April 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
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