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

I.LEARN.CENTER, INC.,
Petitioner-Appellee,

-versus-

SEC En Banc Case No. 11-15-390
For: Change of Corporate Name

I.LEARNCENTER MALABON, INC.,
Respondent-Appellant.
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DECISION

Before the Commission *En Banc* is the Memorandum on Appeal dated 12 November 2015 (the "Appeal") filed by I.LEARNCENTER MALABON, INC., seeking the reversal and setting aside of the Decision dated 27 October 2015 of the Office of the General Counsel (the "Assailed Decision") for lack of merit. The dispositive portion of the Assailed Decision reads thus:

> "WHEREFORE, premises considered, the respondent is hereby ORDERED to change its corporate name to another name by amending its articles of incorporation in accordance with Section 16 (*sic*) of the Corporation Code of the Philippines within thirty (30) days from finality hereof. The respondent is further directed to submit a compliance report within the same period, enclosing therein a certified copy of the approved amended Articles of Incorporation. Respondent's failure to comply with this Order is a ground for revocation of its Certificate of Registration."

RELEVANT FACTS

On 1 August 2007, Petitioner-Appellee and Medtrans Outsource System Technologies, Inc. (Medtrans) executed a Memorandum of Agreement (the "1ST MOA") where they agreed that the business name I.LEARN.CENTER, INC. in any form or appearance upon registration and incorporation with the Securities and Exchange Commission shall be the exclusive property of Petitioner-Appellee, who shall have the exclusive right to use the said business name even after the expiration of the term of the Agreement.[1] Mr. Carl Emerson Consulta (Mr. Consulta) was Medtrans' Chief Executive Officer.

[1] Section 3.2.2 of the MOA.

Meanwhile, Petitioner-Appellee secured for itself the reservation of the name "I.LEARN.CENTER, INC." from 2 August 2007 until 1 September 2007.

On 30 August 2007, I.LEARN.CENTER, INC. (Petitioner-Appellee) was issued a Certificate of Incorporation with SEC Registration No. CS200713595. Article SECOND of Petitioner-Appellee's Articles of Incorporation states that the primary purpose for which it was established is "*to establish and operate educational institution offering Technical/Vocational Education and Training*".

On 15 December 2008, the Intellectual Property Office (IPO) issued a Certificate of Registration for the trademark "I.LEARN CENTER" under the name of Mr. Consulta.

On 23 September 2010, Respondent-Appellant I.LEARNCENTER MALABON, INC. (Respondent-Appellant) was issued a Certificate of Incorporation by the Commission with SEC Registration No. CS20101538. Article SECOND of Respondent-Appellant's Articles of Incorporation states that the primary purpose for which it was established is "*to establish and operate educational institutions offering technical and vocational courses and trainings.*"

Article FIFTH of Respondent-Appellant's Articles of Incorporation (which was filed with the Commission on 21 September 2010) shows that Mr. Consulta is one of the incorporators of Respondent-Appellant.

On 30 September 2010, Mr. Consulta, Petitioner-Appellee's first Manager/Director, tendered his resignation and informed Petitioner-Appellee that his last working day with them is 29 October 2010.

On 12 October 2010, the Commission approved the Amended Articles of Incorporation of Respondent-Appellant changing its corporate name to I.LEARNCENTER PHILIPPINES, INC.

Upon learning of Respondent-Appellant's use of I.LEARNCENTER as part of its corporate name, Petitioner-Appellee filed with the Commission a Petition on 16 May 2012 (the "Petition") praying that an order be issued directing Respondent-Appellant to change its corporate name on the ground that it is identical with or confusingly similar to its trade name.

In its Answer, Respondent-Appellant claimed that it has a better right to the use of I.LEARN CENTER as part of its corporate name on the alleged ground that Mr. Consulta transferred and assigned all his intellectual property rights related to I.LEARN CENTER to it pursuant to a Memorandum of Agreement which they executed on 21 October 2011 (the "2nd MOA).

On 11 December 2011, Respondent-Appellant filed with the IPO an application for the registration of the trademark "I.LEARN CENTER & DEVICE".[2]

On 02 February 2012, the IPO issued a Registrability Report finding that the mark "I.LEARN CENTER & DEVICE" is not registrable because "*it nearly resembles a registered mark belonging to a different proprietor and the resemblance is likely to deceive or cause confusion.*"[3]

On 27 October 2015, the Office of the General Counsel (OGC) issued the Assailed Decision.

Hence, the instant Appeal.

ISSUE

Whether Respondent-Appellant's corporate name which uses the words "I.LEARN CENTER" is identical with or deceptively or confusingly similar to Petitioner-Appellee's I.LEARN.CENTER, INC.

RULING

We dismiss the Appeal for lack of merit.

A corporate name is important in the sense that it signals to the public that the corporate entity has an identity separate and distinct from its stockholders, and identifies the business(es) and the objectives which the corporate entity has set out to do and achieve consistent with its purpose clauses provided in the Articles of Incorporation. It is in this context that a corporate name has been consistently regarded as a property right.[4] Hence, in *Philips Export B.V. v. Court of Appeals*[5], the Supreme Court emphasized that:

> "A name is peculiarly important as necessary to the very existence of a corporation (American Steel Foundries vs. Robertson, 269 US 372, 70 L ed 317, 46 S Ct 160; Lauman vs. Lebanon Valley R. Co., 30 Pa 42; First National Bank vs. Huntington Distilling Co, 40 W Va 530, 23 SE 792). Its name is one of its attributes, an element of its existence, and essential to its identity (6 Fletcher [Perm Ed], pp. 3-4). The general rule as to corporations is that each corporation must have name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates

[2] See Annex "G" of Respondent-Appellant's Memorandum on Appeal
[3] Ibid
[4] Beneficial Industrial Loan Corporation et. al. vs. Kline et al.132 F.2d 520.
[5] G.R. No. 96161, February 21, 1992

> the person (Cincinnati Cooperage Co. vs. Bate, 96 Ky 356, 26 SW 538; Newport Mechanics Mfg. Co. vs. Starbird, 10 NH 123); and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted (Federal Secur. Co. vs. Federal Secur. Corp., 129 Or 375, 276 P 1100, 66 ALR 934; Paulino vs. Portuguese Beneficial Association, 18 RI 165, 26 A 36)."

In the Corporation Code[6] (the "Code"), the provision that regulates the use of corporate names is Section 18.[7] It provides that:

> "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)

In a number of cases[8] where the Supreme Court was asked to interpret and apply Section 18 of the Code, the Court consistently ruled that to fall within the prohibition, two 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.

In *De La Salle Montessori International of Malolos, Inc. v. De La Salle Brothers, Inc.*, the Court laid down the policy behind Section 18 of the Code, thus:

> "The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have 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."[9] (Emphasis supplied)

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[6] Batas Pambansa Blg. 68.
[7] Section 17 of the Revised Corporation Code.
[8] See Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc., G.R. No. 184008, August 3, 2016; Philips Export B.V. v. Court of Appeals, G.R. No. 96161, February 21, 1992; GSIS Family Bank — Thrift Bank v. BPI Family Bank, G.R. No. 175278, September 23, 2015; Industrial Refractories Corporation of the Philippines v. Court of Appeals, G.R. No. 122174, October 3, 2002.
[9] G.R. No. 205548, February 7, 2018

(A) Petitioner-Appellee acquired Prior right over the corporate name I.LEARN.CENTER, INC.

In *Philips Export B.V. et al. v. Court of Appeals et al.,*[10] 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 corporate names.[11]

Applying the foregoing doctrine to the instant case, it is clear that Petitioner-Appellee acquired prior right over the use of the corporate name I.LEARN.CENTER, INC. (with "I.LEARN.CENTER" being the dominant words thereof) because it was incorporated on 30 August 2007, or three (3) years before Respondent-Appellant obtained its Certificate of Incorporation on 23 September 2010. Thus, being a prior registrant of I.LEARN.CENTER, INC., and the first to use the words "I.LEARN.CENTER" as part of its corporate name, Petitioner-Appellee acquired prior right to the use of its corporate name under the principle of *prius tempore potior jure* or first in time, stronger in right.

(B) Respondent-Appellant's corporate name, I.LEARNCENTER PHILIPPINES, INC. (formerly I.LEARNCENTER MALABON, INC.), is identical with Petitioner-Appellee's corporate name, I.LEARN.CENTER, INC.

In its Appeal, Respondent-Appellant alleged that its corporate name I.LEARNCENTER PHILIPPINES, INC. is not confusingly similar to Petitioner-Appellee's corporate name arguing that its use of the word "Philippines" distinguishes the same from Petitioner-Appellee's corporate name. Respondent-Appellant admitted that it decided to amend its corporate name by using the word "Philippines" instead of "Malabon" to impress upon the public that it is different from, and is not a branch of Petitioner-Appellee.[12]

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[10] G.R. No. 96161, 21 February 1992.
[11] See Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc., G.R. No. 184008, [August 3, 2016].
[12] See Par 37 (page 11) of Respondent-Appellant's Memorandum on Appeal.

Respondent-Appellant's arguments fail 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.[13]

In the instant case, it is evident that Respondent-Appellant's corporate name I.LEARNCENTER PHILIPPINES, INC. is not only confusingly or deceptively similar with Petitioner-Appellee's corporate name I.LEARN.CENTER, INC.; it is practically identical with the same. Respondent-Appellant cannot deny this because by its own admission, it used "I.LEARNCENTER", a name that was originally coined by Mr. Consulta who was one of its incorporators.[14] Petitioner-Appellee and Respondent-Appellant were in fact using the same "I.LEARNCENTER" which was coined by Mr. Consulta as part of their respective corporate names. **Respondent-Appellant's "I.LEARNCENTER PHILIPPINES, INC." is therefore identical with Petitioner-Appellee's corporate name I.LEARNCENTER INC.** Considering that Section 18 of the Code expressly proscribes the use of a corporate name that is identical or deceptively or confusingly similar to that of any existing corporation, Respondent-Appellant's use of the same "I.LEARNCENTER" as that of Petitioner-Appellee's constitutes a clear violation of the said provision.

Moreover, in the light of the fact that both Petitioner-Appellee and Respondent-Appellant are operating educational institutions and engaged in the business of providing technical and vocational courses and trainings, the Commission finds that the use by Respondent-Appellant of the words "I.LEARNCENTER" as part of its corporate name clearly violates Section 18 of the Code as it will likely give an impression that it is related to or is operated by the Petitioner-Appellee; its use by Respondent-Appellant will likely confuse and even defraud the public. In *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*[15], 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.
>
> 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."

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[13] Philips Export B.V. et al. v. Court of Appeals et al., G.R. No. 96161, 21 February 1992.
[14] See Par. 27 of Respondent-Appellant's Memorandum on Appeal.
[15] G.R. No. 169504, March 3, 2010.

Respondent-Appellant is using the same "I.LEARNCENTER" of Petitioner-Appellee. Pursuant to the mandate of the Commission to protect corporate entities that acquired prior right over corporate names, and to protect the public who might be confused as a consequence of the use of identical corporate names, the Commission is duty bound to stop Respondent-Appellant from further using "I.LEARNCENTER" as part of its corporate name. In the case of *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus*[16], the Supreme Court emphasized the foregoing, to wit:

> "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." (Emphasis supplied)

Respondent-Appellant also argued that the issuance by the Commission of its Certificate of Incorporation and the subsequent approval of its Amended Articles of Incorporation show that its corporate name is not confusingly similar to Petitioner-Appellee's corporate name, otherwise, the Commission should not have approved the same.

We do not agree.

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.[17] 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*[18], 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 by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name."

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[16] G.R. No. 137592, December 12, 2001.
[17] Standard Oil Co. of N.M. vs. Standard Oil Co. of Cal., 13 U.S.P.Q. 76.
[18] G.R. No. 137592, December 12, 2001.

In Article ELEVENTH of its Articles of Incorporation, Respondent-Appellant specifically undertook to change its corporate immediately upon receipt of notice from the Commission that another corporation has acquired prior right to the use of its corporate name, or if its corporate name has been declared misleading, deceptive or confusingly similar to a registered name. This specific undertaking of Respondent-Appellant is a categorical recognition/acceptance that the issuance by the Commission of its Certificate of Incorporation is without prejudice to a subsequent finding that its corporate name violates Section 18 of the Code and will thus have to be changed. As a corporate regulator, the Commission is not precluded from directing corporations to change their corporate names based on a finding that the same is identical with a registered corporate name. The Commission will not shirk from its responsibility and duty to protect the rights of corporations that have acquired prior right to the use of their corporate names, and the public who will be dealing with them.

Finally, Respondent-Appellant argued in its Appeal that it has a better right to the use of "I.LEARNCENTER" as part of its corporate name because Mr. Consulta allegedly assigned all intellectual property rights to the I.Learn business, including the trademark "I.LEARN CENTER & DEVICE".

We are not persuaded.

The records of the case will show that Petitioner-Appellee was able to register its corporate name I.LEARN.CENTER, INC. with the Commission on 30 August 2007, or way earlier than the registration by Mr. Consulta of the trademark "I.LEARN CENTER & DEVICE" with the IPO on 15 December 2008. The argument that Petitioner-Appellee was under obligation to secure the consent of Mr. Consulta before it can use I.LEARN.CENTER, INC. as its corporate name is baseless. At the time that Petitioner-Appellee filed an application for the registration of I.LEARN.CENTER, INC., Mr. Consulta was not yet the registered owner of the trademark "I.LEARN CENTER & DEVICE"; in fact there was no such trademark yet when Petitioner-Appellee was registered as a corporate entity with the Commission. Mr. Consulta cannot consent to the use of a trademark which is not yet in existence or registered under his name. *Nemo dat quod non habet.*

Granting *ex gratia argumenti* that Petitioner-Appellee was under obligation to secure the consent of Mr. Consulta for the use of "I.LEARN.CENTER" as part of its corporate name, Section 3.2.2 of the 1st MOA tells us that Mr. Consulta, the registered owner of the trademark "I.LEARN CENTER & DEVICE", expressly agreed to the use thereof, and recognized that the corporate name I.LEARN.CENTER, INC. (and all forms or appearances thereof) will become the exclusive property of Petitioner-

Appellee after the same is registered with the Commission. This is an express consent given by the registered owner of a trademark.[19]

WHEREFORE, premises considered, the instant *Appeal* is hereby **DISMISSED** for lack of merit. The Assailed Order of the Office of the General Counsel granting the Petition is hereby **AFFIRMED.**

SO ORDERED.

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
Commissioner

[19] SECTION 159 of Republic Act No. 8293 (the "Intellectual Property Code of the Philippines) provides for the limitations to Actions for Infringement, thus:
"Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

> 159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used. (Emphasis supplied)