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

EQUESTRIAN ASSOCIATION OF THE PHILIPPINES, INC.,
Petitioner-Appellee,

- versus -

EQUESTRIAN PHILIPPINES, INC.,
Respondent-Appellant.
x- -x

SEC *En Banc* Case No. 06-21-485
Promulgation: 21 May 2024

DECISION

Before the Commission *En Banc* is the *Appeal Memorandum* dated 24 June 2021 (the "Appeal") filed by Equestrian Philippines, Inc. (EPI), seeking to annul and set aside the Order dated 16 November 2020 (the "*Assailed Order*") issued by the Company Registration and Monitoring Department (CRMD), the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, the Petition is hereby granted. Respondent is ordered to immediately cease and desist from using the name "EQUESTRIAN PHILIPPINES, INC." and immediately change its corporate name by filing an amendment of its Articles of Incorporation. All visible signages, marks, advertisements, labels, prints and other effects bearing the name "EQUESTRIAN PHILIPPINES, INC." shall be removed"

The *Motion for Reconsideration* filed by EPI, seeking the reconsideration of the *Assailed Decision*, was denied by the CRMD in its *Resolution* dated 1 March 2021 (the "*Assailed Resolution*"), the dispositive portion of which reads:

> "WHEREFORE, premises considered, the Motion for Reconsideration dated 11 November 2020 is hereby DENIED."

RELEVANT FACTS

Appellant **Equestrian Philippines, Inc.** (EPI) is a non-stock, non-profit corporation duly organized and existing under Philippines laws, with principal office located at 51 Cambridge Street, Hillsborough, Ayala

Alabang, Cupang Muntinlupa City. It was organized on 8 May 2018 to promote the equestrian sport, to further the availability of the sport to the community, and to encourage international competitiveness and participation in international equestrian competitions.

Appellee **Equestrian Association of the Philippines, Inc.** (EAPI), is a non-stock and non-profit corporation duly organized and existing under Philippines laws, with principal office located at JCSO Building, 119 de la Rosa cor. Palanca Street, Legaspi Village, Makati City. It was organized on 17 July 2006 to develop and promote the equestrian sport in the Philippines, and be the governing and regulating body of the equestrian sport, as well as to aid in the development and to support competitive Philippine national athletes in the equestrian sport and select individuals or teams to officially represent the Philippines in international competitions, among others.

On 15 August 2019, Appellee EAPI filed a *Petition* with the CRMD praying that an order be issued directing EPI to change its corporate name on the ground that the same is deceptively and confusingly similar with EAPI. EPI, according to EAPI, is not distinguishable with the latter.

In its *Verified Answer with Entry of Appearance* dated 24 October 2019, EPI countered with the assertion that its corporate name is not confusingly or deceptively similar to that of EAPI, and there is no way that their audience/community will mistake one for the other considering that they allegedly know each other. EPI further contended that the inclusion of the words "Association" and "Philippines" in the respective corporate names make the two (2) corporations distinguishable from each other.

On 16 November 2020, the CRMD issued the *Assailed Order* granting EAPI's *Petition*, and directed Appellant EPI to change its corporate name after finding the latter to be not distinguishable from that of Appellee's EAPI. According to the CRMD, considering that the dominant word in both corporate names is "Equestrian," the use of the word "Association" in EAPI's corporate name will not make the two corporate names distinguishable.

The *Motion for Reconsideration* dated 11 December 2020 was denied by the CRMD in the *Assailed Resolution*. Applying Sec. 17 of the RCC, the CRMD reiterated the finding that EPI is not distinguishable from EAPI, even with the removal of the word "Association" from the latter.

In the instant *Appeal*, EPI maintains that the CRMD committed reversible error in directing it to change its corporate name considering that: (a) EAPI has not acquired any prior right over the use of the words "Equestrian" and "Philippines," or their combination in "Equestrian Association of the Philippines;" (b) the corporate name "Equestrian Philippines, Inc." is not confusingly similar with "Equestrian Association of the Philippines, Inc.;" and (c) the distinguishability test set forth under Section 17 of the RCC cannot be applied retroactively, otherwise the same will violate a vested right.

ISSUE

Whether the CRMD committed reversible error in holding that Respondent-Appellant's corporate name, "Equestrian Philippines, Inc." is deceptively or confusingly similar, and not distinguishable to Petitioner-Appellee's "Equestrian Association of the Philippines, Inc."

RULING

We sustain the Assailed Order of the CRMD.

I. Appellant's EPI is deceptively or confusingly similar to EAPI; Neither is EPI distinguishable from Appellee's EAPI

This Commission is once again asked to determine the rights of the parties to the use their respective corporate names, and to apply the relevant provision of the Revised Corporation Code[1] (the law in effect at the time of the filing of the Petition) for this purpose.

The Revised Corporation Code (RCC) requires all corporations to have a corporate name which should be included in the Articles of Incorporation.[2] The purpose of this requirement is to inform the public that a corporate entity has an identity separate and distinct from its stockholders. The corporate name also allows the public to identify and/or associate the business(es) and the objectives of the corporate entity, consistent with its purpose clauses provided in the Articles of Incorporation. It is in this context that a corporate name has been

[1] RA No. 11232
[2] Sec. 13(a) of the RCC

considered a property right.[3] We find these principles reiterated and emphasized in *Philips Export B.V. v. Court of Appeals*[4], to wit:

> "**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 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)." (Emphasis supplied)

We cannot overemphasize the fact that just like a corporate franchise, the right to the use of a corporate name is a mere privilege granted by the State, and its continued enjoyment is always subject to the condition that the grantee is not in violation of any law, rule or regulation. In this regard, Sec. 17 of the RCC sets out the rules on the use of corporate names, to wit:

> "**Section 17.** *Corporation Name.* - **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, rules and regulations.
>
> A name is not distinguishable even if it contains one or more of the following:
>
> (a) The word "corporation", "company", incorporated", "limited", "limited liability", or an abbreviation of one if such words; and
> (b) Punctuations, articles, conjunctions, contractions, prepositions, abbreviations, different tenses, spacing, or number of the same word or phrase.
>
> **The Commission upon determination that the corporate name is: (1) not distinguishable from a name already reserved or registered for the use of another corporation**; (2) already protected by law; or (3) contrary to law, rules and regulations, **may summarily order the corporation to immediately cease and**

[3] Beneficial Industrial Loan Corporation et. al. vs. Kline et al.132 F.2d 520.
[4] G.R. No. 96161, February 21, 1992

> **desist from using such name and require the corporation to register a new one. The Commission shall also cause the removal of all visible signages, marks, advertisements, labels prints and other effects bearing such corporate name**. Upon the approval of the new corporate name, the Commission shall issue a certificate of incorporation under the amended name.
>
> If the corporation fails to comply with the Commission's order, the Commission may hold the corporation and its responsible directors or officers in contempt and/or hold them administratively, civilly and/or criminally liable under this Code and other applicable laws and/or revoke the registration of the corporation." (Emphasis supplied)

Unlike the old Corporation Code which adopted the two-word difference standard, Sec. 17 of the RCC now uses "distinguishability" as the standard in evaluating or determining if the use of a corporate name may be allowed or not. The RCC is categorical in saying that a corporate name that is not distinguishable from one that is already reserved or registered for use of another corporation cannot be used. In interpreting this provision, the Commission is guided by the minutes of the Congressional deliberation[5] which embodies the Legislative intent, to wit:

> "The present name verification system, with the "confusing similar" standard imposed, is indeed confusing. **Hence, a shift to the distinguishability test will no doubt allow the full and seamless automation of name registration**. For example, under the law today, you cannot register "XYZ Dream Network" because of a previously registered "XYZ Dream Hotel". **Under the proposed amendment, you can do so, because one of the key words is different, that is network and hospital**."

Sec. 17 of the RCC therefore allows the use of the same word(s) as a corporate name provided that it is accompanied by another word that will distinguish one from the other. In the absence of an additional word(s) that will distinguish the word(s) that are the same, the law expressly prohibits the use thereof as a corporate name. It must be emphasized though that the purpose of, and intent of the Congress in adopting/using the distinguishability test is the same as that of Sec. 18 of the Old Code i.e. the protection of the public, as well as the corporations involved. The distinguishability test is also in place to ensure that new corporations are not unduly deprived of the use of the word(s) or name(s) that are already being used by existing corporations, if the former can show, among others, that their line of business is different.

[5] Session No. 47 of the Senate on the revision of the Corporation Code (December 13, 2016)

The policy underlying the prohibition on the use of corporate names that are not distinguishable from a name already reserved or registered for the use of another corporation 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.[6] The purpose of regulating the use of corporate names for the protection of the public was emphasized in *Philips Export B.V. v. Court of Appeals*[7], to wit:

> "A corporation acquires its name by choice and need not select a name identical with or similar to one already appropriated by a senior corporation while an individual's name is thrust upon him (See Standard Oil Co. of New Mexico, Inc. v. Standard Oil Co. of California, 56 F 2d 973, 977). **A corporation can no more use a corporate name in violation of the rights of others than an individual can use his name legally acquired so as to mislead the public and injure another** (Armington vs. Palmer, 21 RI 109, 42 A 308)." (Emphasis supplied)

Industrial Refractories Corporation of the Philippines v. Court of Appeals[8], on the other hand, emphasized that the Commission is duty-bound to strictly regulate the use of corporate names to ensure that purpose of the law is achieved, to wit:

> "**It is the SEC's duty 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**, and **it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion.** Clearly therefore, the present case falls within the ambit of the SEC's regulatory powers." (Emphasis supplied)

Applying the foregoing statutory and jurisprudential standards, We find and so hold that Appellant's EPI is not distinguishable from Appellee's EAPI. Both corporations were organized, among others, essentially for the same purpose of promoting equestrian sport in the country; to encourage participation and represent the country in international competitions, and to receive any type of support from the government and the public. Necessarily, they perform similar functions which are directed at providing services to the <u>same</u> targeted market i.e. professional, amateur or even potential equestrians. Appellants, in fact, affirmed this, to wit:

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[6] Lyceum of the Philippines, Inc. vs CA (G.R. No. 101897. March 5, 1993)
[7] G.R. No. 96161, February 21, 1992
[8] G.R. No. 122174, [October 3, 2002]

> "In this regard, it bears underscoring that the niche market of Petitioner-Appellee and the Respondent-Appellant are the members of the Philippine equestrian community, a highly exclusive and limited set of individuals."[9]
>
> "Given the same, it is submitted that it is highly unlikely that members of the equestrian community will be confused into thinking that the Petitioner-Appellee and Respondent-Appellant are one and the same entity because of their corporate names."[10]

If both corporations are allowed to continue operating using their respective corporate names, we will have a scenario where there are two (2) identical corporations doing the same purpose, catering to the same market, and transacting with the same stakeholders. This will undoubtedly result in confusion on the part of the public who will be dealing with them, which is the very evil that Sec. 17 of the RCC seeks to avoid.

The law is clear in prohibiting the use of corporate names that are not distinguishable with one that is already reserved or registered for the use of another corporation. There is nothing in Sec. 17 of the RCC which allows the use of corporate names which are not distinguishable, even if the concerned entity is able to show its clients or potential market will not mistake it for another corporation with a similar corporate name. Moreover, in the light of the policy of the law to ensure that the public is protected from any confusion resulting from the use of corporate names, the determination by Appellant EPI that none in the equestrian community will confuse it for EAPI is utterly irrelevant and immaterial. Besides, EPI clearly missed the fact that as a corporate entity, it will not only be dealing with the equestrian community; it will also deal with regulators, relevant government agencies, the international community, potential equestrians, and other relevant stakeholders, to name a few, which the law equally protects from confusion related to, or resulting from the use of corporate names.

Considering that Appellant's EPI is non-distinguishable from Appellee's EAPI, a name which was registered way back in 2006, or twelve (12) years earlier than EPI, this Commission agrees with the CRMD that EPI should change its corporate name for the protection of the public.

We do not agree with EPI's position that it has already acquired vested right over its corporate name, and can no longer be deprived of its

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[9] *Appeal Memorandum*. Par. 40.1
[10] *Id*. Par. 40.2

use. As mentioned earlier, the right to the use of a corporate name is a mere privilege (very much like the corporate franchise) which is always subject to the condition that no law, rule or regulation is being violated by the grantee. In fact, in *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus*[11], the Supreme Court emphasized that entities found to be using corporate names that are not compliant with the law assume the risk of being directed to change the same, 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, <u>whether a business or a nonprofit organization</u>, if misleading or <u>likely to injure</u> in the exercise of its corporate functions, <u>regardless of intent</u>, 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**. (Emphasis and underscoring supplied)

In fact, Appellant itself expressly recognized the statutory limitation to the use of its corporate name by its specific undertaking to change the same when directed by the Commission, to wit:

> "That the incorporators and trustees undertake to change the name of the corporation as herein provided, or as amended thereafter, immediately upon receipt of notice or directive from the Securities and Exchange Commission that another corporation, partnership or person has acquired prior right to the use of that name or has been declared as misleading, deceptive, confusingly similar to a registered name or contrary to public morals, good custom or public policy."[12]

Considering that EPI is not distinguishable from EAPI, the Commission is duty-bound to implement and enforce Sec. 17 of the RCC, and exact compliance from EPI with its above-quoted undertaking, for the protection of the public who will be dealing with it.

The foregoing notwithstanding, even if we apply *ex gratia argumenti* Section 18 of the old Corporation Code[13] (the "Old Code"), the finding and conclusion will still be the same i.e. EPI must change its corporate name for being deceptively or confusingly similar to EAPI. Sec. 18[14] of the Old Code prohibits the use of a corporate name that is identical or deceptively of confusingly similar to that of any existing corporation.

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[11] G.R. No. 137592, December 12, 2001
[12] Article Tenth of the Articles of Incorporation of EPI
[13] Batas Pambansa Blg. 68
[14] "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)

It is an established jurisprudential rule that for a corporate name to fall within the express prohibition of Sec. 18 of the Old Code, two (2) requisites must be proven to exist, to wit:

> "To come within its scope, two requisites must be proven, namely:
>
> (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.[15] (Emphasis supplied)

In relation to the first requisite i.e. the acquisition of a prior right over the use of a corporate name, the Supreme Court has consistently applied the priority of adoption rule which reckons the rightful entitlement of a corporation to the use of a corporate name on the date of registration, the same being the date when the said corporation begins using such approved corporate name. The Supreme Court expounded this rule in *Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc.*[16], to wit:

> "In Industrial Refractories Corporation of the Philippines v. Court of Appeals, **the Court applied the priority of adoption rule to determine prior right, taking into consideration the dates when the parties used their respective corporate names**. It ruled that "Refractories Corporation of the Philippines" (RCP), as opposed to "Industrial Refractories Corporation of the Philippines" (IRCP), has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant on October 13, 1976. **The Court noted that IRCP only started using its corporate name when it amended its Articles of Incorporation** on August 23, 1985." (Emphasis supplied)

In the instant case, the records show that EAPI was incorporated on 17 July 2006, where it started using its corporate name. EPI, on the other hand, was incorporated only on 8 May 2018, which is about twelve (12) years after EAPI has been exclusively enjoying the use of its corporate name. Being the prior registrant, EAPI clearly has prior right to the use of its corporate name in furthering the purpose for which it was

[15] Philips Export B.V. vs Court of Appeals (G.R. No. 96161, 21 February 1992)
[16] G.R. No. 184008, August 3, 2016

established. EPI in fact, judicially admitted[17] this finding when it stated that "*[P]etitioner-Appellee only acquired a prior right over its corporate name as registered with the Honorable Commission – "Equestrian Association of the Philippines, Inc.*"[18] Considering that what is at issue in the instant case is the determination on who among the parties has the prior right to use their corporate name without violating the law, a matter that is exclusively within the jurisdiction of this Commission, We find no cogent reason to disturb the finding of the CRMD.

As regards the second requisite, the test to determine if a corporate name is confusingly similar to that of a registered name, is whether the similarity is such as to mislead a person using ordinary care and discrimination[19] Relative thereto, the Supreme Court has consistently emphasized that the probability or the likelihood of confusion suffices to bar any corporation from using/adopting as its corporate name, one that is already registered with the Commission, including word(s) that forms part thereof, to wit:

> "On the second point (b), there is a deceptive and confusing similarity between petitioner's proposed name and respondent's corporate name, as found by the SEC. **In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. And <u>even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur</u>**."[20] (Emphasis supplied)

Moreover, it is established in jurisprudence that the probability or likelihood of confusion is higher if the party alleged to be using a name of an existing corporation or one that is already protected by law is engaged in the same or substantially similar business, to wit:

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[17] "Statements in the Answer constitute judicial admissions which bind petitioner.

A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and is cannot be controverted by the party making such admission and is conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader**. A party cannot subsequently take a position contrary to or inconsistent with what was pleaded." (Emphasis supplied) [*Gonzales-Saldaña vs Spouses Niamatali*, G.R. No. 226587, November 21, 2018]

[18] *Appeal Memorandum.* Par. 30

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

[20] *GSIS Family Bank - Thrift Bank v. BPI Family Bank* (G.R. No. 175278, September 23, 2015)

> "**The likelihood of confusion is higher in cases where the business of one corporation is the same <u>or substantially the same</u> 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."[21] (Emphasis supplied)

In the instant case, the use by both EAPI and EPI of their respective corporate names both contains the words "Equestrian" and "Philippines", to carry out essentially same purpose, cater to the same market niche, and provide its services to, deal with and transact with practically the same stakeholders, will likely (and even necessarily) confuse the public. Thus, EPI, being the latter registrant must give up the continued use of its corporate name as it is deceptively or confusingly similar to EAPI.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit**.** The *Order* dated 16 November 2020 of the Company Registration and Monitoring Department is hereby **AFFIRMED**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

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[21] *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.* (G.R. No. 169504, March 3, 2010)