



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

21 September 2011

SEC-OGC Opinion No. 11-39
Trade name, Corporate name

Emperador Distillers, Inc.
7/F 1880 Eastwood Avenue, Eastwood Cyberpark
E. Rodriguez Jr. Avenue (C-5)
Bagumbayan, Quezon City 1110

ATTENTION: Atty. Ric C. Paralejas

Sir:

This refers to your 20 May 2011 letter, addressed to Director Benito A. Cataran. You represent that the Commission approved an amendment of your articles of incorporation stating that your corporate name is:

"Emperador Distillers, Inc. doing business under the name and style of EDI International."

Based on this, you request our opinion on the following questions:

"Firstly, since it would now appear that the corporate name of EDI is 'Emperador Distillers, Inc. doing business under the name and style of EDI International,' is EDI still legally allowed to use the name EMPERADOR DISITLLERS (sic), INC. in its regular and official transactions with both private and government entities xxx and in its official papers and commercial documents xxx.

Secondly, since the name EDI INTERNATIONAL is intended to be used as a business name, can EDI also use it separately and independently without including the complete amended corporate name in its papers, documents, labels and posters. What are the restrictions, if any, in the use of the business name EDI INTERNATIONAL."

A corporation may assume a name other than its legal (corporate) name and carry on business in such assumed (business or trade) name.¹

¹ 6 Fletcher Cyc Corp § 2442.1 (Perm Ed).

Pursuant to this settled principle and to existing laws, the Commission adopted the following policy in its *Guidelines and Procedures on the Use of Corporate and Partnership Names*.²

"Business or trade name which is different from the corporate or partnership name **shall be indicated in the articles of incorporation** or partnership. A company may have more than one business or trade name."³

From your representations, it seems that you believe that the corporation's name is now 'Emperador Distillers, Inc. doing business under the name and style of EDI International.' We clarify that the subject amendment in your articles signifies that your corporate name is EMPERADOR DISTILLERS, INC., and at the same time, you have a different business or trade name, that is EDI INTERNATIONAL.

Thus, firstly, your corporation may still use the name EMPERADOR DISTILLERS, INC., in its regular and official transactions with both private and government entities, and in its official papers and commercial documents since it remains as the official name of the corporation.⁴

Secondly, your corporation may also use the name EDI International in the conduct of your business – whether in papers, labels, posters or other documents. We note that it is settled that a corporation using an assumed name (business or trade name) in executing a contract is bound just as much as if it had used its proper name (corporate name).⁵

However, there are instances wherein you are mandated to use, issue and/or submit papers reflecting therein not just your business name but also your corporate name. An example is when you file official papers, such as Financial Statements and the like, with the Commission and other agencies (e.g. Bureau of Internal Revenue). Also, the Official Receipt (O.R.) you issue in the conduct of your business should reflect your corporate name, as it is to the corporate entity, under its corporate name, that a Tax Identification Number (TIN) is issued.⁶

² SEC Memorandum Circular No. 5, series of 2008 as amended by SEC Memorandum Circular No. 12, series of 2008.

³ Emphasis supplied.

⁴ Corporation Code, Section 36.

⁵ Supra, at Note 1.

⁶ Sections 237, 238 and 264 of Republic Act No. 8424 also known as the Tax Reform Act of 1997. Specifically, Section 238, states that:

"Sec. 238. Printing of Receipts or Sales or Commercial Invoices. – xxx

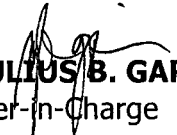
No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner,

xxx." (Emphasis supplied.)

Further, we emphasize that this does not preclude other regulatory agencies from formulating restrictions on the use of the business or trade name (e.g. whether or not to indicate the corporate name in specific papers). For existing restrictions, or regulations on the matter, please refer to the Department of Trade and Industry, the Intellectual Property Office, Bureau of Internal Revenue, Bureau of Customs and other relevant agencies.

This Opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances.

Please be guided accordingly.


VESPER JULIUS B. GARCIA
Officer-in-Charge