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

PHILIPPINE FEDERATION OF GAMEFOWL BREEDERS – PFGB, INC.,
Petitioner – Appellant,

- *versus* -

PAMBANSANG FEDERATION NG GAMEFOWL BREEDERS (DIGMAAN), INC.,
Respondent – Appellee.
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SEC En Banc Case No. 09-15-388
Promulgated: 09 January 2024

DECISION

Before the Commission *En Banc* is the Notice of Appeal with Appeal Memorandum dated 23 September 2015 (the "Appeal"), which was filed on 24 September 2015 by Petitioner-Appellant PHILIPPINE FEDERATION OF GAMEFOWL BREEDERS – PFGB, INC. to assail the Order of the Office of the General Counsel (OGC) dated 11 August 2015 (the "Assailed Order"), the dispositive portion of which, reads:

> "**WHEREFORE**, premises considered, the instant Petition is **DISMISSED** without prejudice for violating the rule on forum shopping."

PARTIES

PHILIPPINE FEDERATION OF GAMEFOWL BREEDERS – PFGB, INC. (the "Appellant") is a non-stock and non-profit corporation duly organized and existing under the laws of the Philippines, having been issued a Certificate of Registration with SEC Company Registration No. CN201109296 on 31 May 2011.

PAMBANSANG FEDERATION NG GAMEFOWL BREEDERS (DIGMAAN), INC. (the "Appellee") is a non-stock and non-profit corporation duly organized and existing under the laws of the Philippines, having been issued a Certificate of Registration with SEC

Company Registration No. CN201404231 on 4 March 2014. Appellee is also the owner of the trademark PFGB-DIGMAAN, which was registered with the Intellectual Property Office (IPO) under Trademark Registration No. 9282 on 31 March 2016.

THE RELEVANT FACTS

Since its incorporation on 31 May 2011, the Appellant has allegedly labelled and used the word "DIGMAAN" for its national stag derby, which is conducted annually.

On 16 February 2014, an election of the officers of Appellant was held where Mr. Wilson Ong (Mr. Ong) and Mr. Roderick D. Reyes (Mr. Reyes) vied for the Presidency. Mr. Reyes won and was elected President.

Mr. Ong, along with the other members, thereafter formed and incorporated the Appellee corporation, which carried out similar activities as that of the Appellant using the word "DIGMAAN".

On 27 February 2014, Mr. Ong personally filed with the IPO an application for registration of the mark "PFGB DIGMAAN", which he later on assigned to Appellee through the Assignment of Application for Registration of Trademark which was executed and entered into on 9 July 2014,[1] or after a few months after the incorporation of the Appellee on 04 March 2014.

On 29 May 2014, the Appellant filed with the Commission a *Petition for Change of Corporate Name* (the "Petition") praying that a decision be made (a) declaring the Appellant to be the rightful owner of the word "DIGMAAN", (b) and directing Appellee to desist from using the word "DIGMAAN" for its events. The *Petition* was originally filed before the Commission's Company Registration and Monitoring Department ("CRMD"), but was subsequently endorsed to the OGC on 2 July 2014 for proper disposition.

In its Answer filed on 22 August 2014, Appellee moved for the dismissal of the Petition on the ground that it is the IPO, and not the Commission, that has jurisdiction over the matter(s) raised therein i.e.

[1] See Annex "1" of the Reply Memorandum.

confusion created by the use of an acronym. Appellee alleged that the matter is already pending with the IPO under IPO Case No. 10-2014-00008.[2]

During the clarificatory hearing on 16 June 2015, it was revealed that on 2 June 2014, the Appellant filed with the IPO a *Petition for Quieting of Rights* covering the name "PFGB-DIGMAAN". An *Order*[3] was issued by the IPO on 30 September 2014, which dismissed the said petition. Appellant filed a *Motion for Reconsideration* on 21 October 2014 which, at the time the time of the filing of the instant *Appeal*, was still pending resolution with the IPO.

On 11 August 2015, the OGC issued its Assailed Order which dismissed the Petition on the basis of a finding that the Appellant violated the rule against forum shopping, after it instituted two (2) actions with the IPO and the Commission involving the issue on ownership over the use of the word "DIGMAAN". The OGC also agreed with Appellee that the Commission's jurisdiction is only limited to corporate names of entities and does not cover acronyms, tradenames, or trademarks[4]; and cannot thus rule on the issue of whether the Appellee's use of the acronym "PFGB-DIGMAAN" is identical and deceptively or confusingly similar with the Appellant's corporate name.

On 19 November 2020, an Order was issued by the Commission directing the parties to inform the Commission of any supervening event or subsequent development which may assist in the speedy disposition of the case.

In compliance with the said Order, the Appellee filed its Manifestation on 18 December 2020 where it stated that no material development has transpired between and among the parties except for the issuance by the Intellectual Property Office of a Certificate of Registration on 15 January 2015 for the tradename "PFGB Digmaan" to the Appellee, which have been properly filed in the records of SEC Case No. 07-14-437.

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[2] Par. 10 of the Answer
[3] Order No. 2014-4(D) – IPV No. 10-2014-00008, September 30, 2014.
[4] Philippine Federation of Gamefowl Breeders-PFGB, Inc. v. Pambansang Federation ng Gamefowl Breeders (Digmaan), Inc.; SEC Case No. 07-14-437 - Order of the Office of the General Counsel dated 11 August 2015.

ISSUES

(1) Whether the Commission has jurisdiction to determine if Appellant's corporate name is identical with or deceptively or confusingly similar to that of Appellee.

(2) Whether the OGC was correct in dismissing the Petition for violating the rule against forum shopping.

RULING

The Commission has jurisdiction over to take cognizance of, and pass upon the use by the Appellant and Appellee of their respective corporate names.

In its Appeal, Appellant maintained that the instant case is within the jurisdiction of the Commission in as much as it seeks the cancellation of the Certificate of Registration of Appellee on the ground that the latter's corporate name is similar to its corporate name.[5] Appellee however posits otherwise, arguing that the Commission has no jurisdiction over the instant case which involves an issue of confusing similarity arising from the use of an acronym, and trade names or trademarks.

We hold that while Appellant and Appellee's dispute appears to be centered on who owns and/or who has the better right to the use of the word "DIGMAAN", the fact that on their face, their corporate names are practically identical or confusingly similar, this Commission has jurisdiction to take cognizance of, and pass upon the instant case.

A corporate name is important because it informs 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

[5] Par. 1 (page 6) of the Appeal

clauses provided in the Articles of Incorporation. This principle was emphasized in *Philips Export B.V. v. Court of Appeals*[6], thus:

> "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)."

Given the foregoing, a corporate name has been consistently regarded as a property right.[7]

The use of corporate names is regulated by law. The Commission is mandated under the Corporation Code[8] to protect the public from fraud, actual or potential, caused by, or which may arise in relation to, or as a consequence of the use of corporate names. This mandate is embodied in Section 18 of the Corporation Code, thus:

> "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 the implementation of Section 18 of the Corporation Code, the Commission issued Memorandum Circular No. 21 s. 2013 (MC 21) which laid down the guidelines on the use of corporate names, and reiterated the prohibition on the use of a corporate name that is identical to a name already registered with the Commission, to wit:

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[6] G.R. No. 96161, February 21, 1992
[7] Beneficial Industrial Loan Corporation et. al. vs. Kline et al.132 F.2d 520.
[8] BP Blg. No. 68 was the law in effect when the instant case was filed

> "3(a) **The name shall not be identical, misleading or confusingly similar to a corporate** or partnership **name registered with the Commission**, or with the Department of Trade and Industry, in the case of sole proprietorships;" (Emphasis supplied)

The policy underlying the prohibition in the afore-quoted provision against the use of names of existing corporations 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] The proscription on the use of identical, or deceptively or confusingly similar names which violate the rights of others and mislead the public was emphasized and reiterated in *Philips Export B.V. v. Court of Appeals*[10], thus:

> "**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)

In regulating the use of corporate name, we find in jurisprudence both a recognition and affirmation of the Commission's power and authority to deregister and/or revoke any name that is found to violate Section 18 of the Corporation Code, thus:

> "**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."[11] (Emphasis supplied)

Appellee's Pambansang Federation ng Gamefowl Breeders (Digmaan), Inc. is deceptively or confusingly similar to Appellant's Philippine

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[9] Lyceum of the Philippines, Inc. vs CA (G.R. No. 101897. March 5, 1993)
[10] G.R. No. 96161, February 21, 1992
[11] *Industrial Refractories Corporation of the Philippines v. Court of Appeals* (G.R. No. 122174, [October 3, 2002])

Federation of Gamefowl Breeders – PFGB, Inc.

In implementing Section 18 of the Corporation Code, this Commission has consistently adhered to, and applied the established jurisprudential rule that for a corporate name to fall within the express prohibition of the law, 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.[12] (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 from the date of registration, the same being the date when the said corporation begins using such approved corporate name. In *Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc.*[13], the Court ruled as follows:

> "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."

In the instant case, the records show that the Appellant was incorporated on 31 May 2011, while the Appellee was incorporated only

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

on 04 March 2014. Clearly, Appellant has, except for the word "Digmaan" as will be discussed later, acquired prior right over its corporate name.

As regards the second requisite, the Supreme Court has consistently ruled that in determining if a corporate name is confusingly similar to that of a registered name or one that is protected by law, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination.[14]

Relative thereto, We find in *GSIS Family Bank - Thrift Bank v. BPI Family Bank*[15], the prevailing jurisprudential rule 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>**." (Emphasis supplied)

Moreover, it is equally 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, thus:

> "**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." [16](Emphasis supplied)

In the instant case, a cursory look at the corporate name of Appellee i.e. Pambansang Federation ng Gamefowl Breeders (Digmaan), Inc., will readily show and give the public the impression that it is practically similar to Appellant's Philippine Federation of Gamefowl Breeders – PFGB, Inc.; and the similarity is likely to confuse the public

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[14] Philips Export B.V. et al. v. Court of Appeals et al., G.R. No. 96161, 21 February 1992
[15] G.R. No. 175278, September 23, 2015
[16] *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.* (G.R. No. 169504, March 3, 2010)

who will have the occasion to deal with them because they are engaged in the same line of business.

Given the foregoing, We hold that the exercise by this Commission of its regulatory authority to deregister and/or direct the change by Appellee of its corporate name, is in order.

Appellee's registered trademark "Digmaan" cannot be appropriated by Appellant.

In relation to the word "Digmaan" which appears to be a part of the corporate name of Appellee, We note that the same is covered by a trademark registration which was issued by the IPO in favor of Appellee. In this regard, it should be emphasized that corporate names or part thereof that are registered trademarks are protected under Section 18 of the Corporation Code, which classifies them as *"other name already protected by law"*.

Relative thereto, Par. 5 of MC 21 series of 2013 specifically prohibits the use of a tradename or trademark as part of a corporate name without the registered owner's consent, thus:

> "A tradename or **trademark registered with the Intellectual Property Office** **may be used as part of the corporate** or partnership **name of a party other than its owner if the latter give its consent to such use.**" (Emphasis supplied)

Stated otherwise, the afore-quoted provision of the rule prohibits the use of a trademark (registered with the IPOPHIL) as a corporate name or part thereof if the owner of the registered trademark does not consent to, or approve of such use. This provision is intended to ensure the full protection accorded to trademark owners of their registered marks under Section 18 of the Corporation Code. It is designed to encourage the registration of trademarks in the Philippines, and to implement the policy of giving premium to such registration with the assurance, among others, that any registered trademark cannot be used as a corporate name without the consent of the registered owner.

The recognition and protection accorded by the IPO to the registered "DIGMAAN" trademark of Appellee pursuant to the provisions of the Intellectual Property Code of the Philippines (IP Code)[17] justify and warrant the grant by this Commission of the same recognition and

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[17] Republic Act No. 8293

protection to said registered trademark, not on the basis of the IP Code but pursuant to the express provision of Section 18 of the Corporation Code which prohibits the use of "*names already protected by law*" as corporate names or part thereof without the consent of the registered owner. Stated otherwise, the protection being accorded to Appellees in the instant case is based on the Commission's mandate under the Corporation Code (and independently of the IP Code which is administered by the IPO) to protect owners of trademarks registered with the IPO by ensuring that no person or entity will be allowed to use a registered trademark as a corporate name (or a part thereof) without the consent of the registered owner.

In the instant case, considering that the word "DIGMAAN" is not part of the corporate name of Appellant, We hold that no violation of Section 18 of the Corporation Code was committed. It would have been different had Appellant used the trademark "DIGMAAN" as part of its corporate name sans the consent of Appellee.

The foregoing notwithstanding, the issue on the use by the parties of the word "DIGMAAN" in relation to their respective activities is, to the mind of the Commission, not within its jurisdiction. The reason for this is that only Appellee is using the word "DIGMAAN" as part of its corporate name, hence, the confusing similarity in corporate names which Section 18 of the Corporation Code seeks to prevent will not arise. Consequently, given the inapplicability of Section 18 of the Corporation Code, the Commission is devoid of authority to rule on the use of the word "DIGMAAN" which may be based on statutes, rules or regulations not administered by the Commission.

Thus, while Appellee needs to change its corporate name for being confusingly similar to that of Appellant's Philippine Federation of Gamefowl Breeders – PFGB, Inc., Appellee's right to use the word the trademark "DIGMAAN" as part of its new name will be sustained in the light of the fact that Section 18 of the Corporation Code protects "*names already protected by law*". In this regard, should the Appellant so desire to use the word "DIGMAAN" as part of its corporate name, it must secure first the written consent of the Appellee for the Commission to favorably act on the same.

Finally, considering that the main issue presented in the Petition has already been addressed and determined, the Commission sees no need to pass upon the matter on the Appellant's alleged violation of the rule on forum shopping, which the OGC used as basis in dismissing the case without prejudice. This is consistent with the principle of liberal construction of the Rules in administrative proceedings, such as the instant case, to promote public interest and assist the parties in obtaining a just, prompt, expeditious, and inexpensive resolution and/or disposition of cases.[18]

WHEREFORE, premises considered, the instant Appeal is hereby **GRANTED**. Appellee Pambansang Federation ng Gamefowl Breeders (Digmaan), Inc. is hereby **DIRECTED** to change its corporate name within thirty (30) days from receipt of this Decision. The Decision of the Office of the General Counsel is hereby **SET ASIDE**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

McJILL BRYANT T. FERNANDEZ
Commissioner

[18] Rule I, Section 1-3 of the Rules