Republic of the Philippines
Department of Finance
Securities and Exchange Commission

THE MANILA SOUTHWOODS GOLF AND COUNTRY CLUB, INC.
Petitioner-Appellee

- versus - **SEC En Banc Case No. 08-07-112**

MANILA SOUTHWOODS LADIES CHAPTER, INC.,
Respondent-Appellant.

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DECISION

Before the Commission *En Banc* is an *Appeal*[1] filed on 15 August 2007 by Manila Southwoods Ladies Chapter, Inc. (**Appellant**), seeking to reverse and set aside the *Order* dated 16 July 2007 (**Assailed Order**) of the Office of the General Counsel (**OGC**), the dispositive portion reads:

> "WHEREFORE, premises considered, Respondent [Appellant] is hereby directed to change or modify its corporate name by deleting the words "Manila Southwoods" within thirty (30) days from date of receipt of this Order."

The Facts

The Manila Southwoods Golf and Country Club, Inc. (**Appellee**) is a domestic corporation registered with the Commission on 05 September 1990 under Company Registration No. 181069 with principal office address at Southwoods Boulevard, Bo. Cabilang Baybay, Carmona, Cavite[2]. Its primary purpose is: "*[promoting] the social, recreational and athletic activities on a non-profit basis among its stockholders, the core of which will be the acquisition and maintenance of a golf field course and tennis courts, and other similar facilities.*"

Appellant is a domestic corporation registered with the Commission on 24 November 2005 under Company Registration No. CN200519615 with principal office address at 23-B Makati Tuscany Condominium, 6751, Ayala Avenue, Makati City[3]. Its primary purpose is: "*[t]o organize, establish and register a membership association of lady golfers who are primary members of the Manila Southwoods Golf and Country Club, Inc. with the end in view to enhance, promote, diversify the golf game all throughout the country and in foreign lands by way of promoting the game through organized tournaments to be subscribed by the business community for the benefit of the young and deserving players who may in*

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[1] Notice of Appeal and Memorandum of Appeal dated 14 August 2007.
[2] Paragraph 1, Appellee's Reply Memorandum .
[3] Paragraph 1, Appellant's Memorandum of Appeal.

the future become our pride and heroes, likewise, to promote charitable committments (sic) to the under priviledged (sic) children through scholarships."

On 15 September 2006, Appellee filed a *Petition* with the OGC alleging that Appellant's corporate name is confusingly similar to its name. On 16 July 2007, OGC issued the Assailed Order granting Appellee's *Petition*. The OGC ruled that:

> "Likewise, it does not follow that as "Manila" and "Southwoods" pertain to geographical names or addresses, then the words "Manila Southwoods" can no longer be appropriated. **Taken together, these words form a distinctive name which serve to identify and differentiate Petitioner [Appellee] from other corporations.**
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> We presumed that it is no coincidence that Petitioner [Appellee] included the word "Southwoods" in its name because the golf and country club is located along Southwoods Avenue in Carmona, Cavite. It appears, therefore, that the word "Southwoods" is descriptive of the geographic location in Manila. Thus, the word "Manila" is not indicative of the geographic location of Petitioner [Appellee]. In sum, **we find that the appellation of the word "Manila" in "The Manila Southwoods" (the name under which Petitioner [Appellee] is doing business) is an original or creative idea conceived by and for the benefit of Petitioner [Appellee] which, under the law is entitled to protection.**
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> Further, it bears emphasis that the incorporators of **Respondent [Appellant] are members of Petitioner. Hence, they are well aware that Petitioner uses "Manila Southwoods" as part of its corporate name**. Following the rules of the Commission, the Respondent should secured the consent of the Petitioner [Appellee] when it used the words "Manila Southwoods" in its corporate name.
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> On the issue of confusingly similar between the two corporate names, **we find that the use by the Respondent [Appellant] of the words "Manila Southwoods" in its corporate name may indeed cause confusion to the public**."

Aggrieved, Appellant filed that instant *Appeal*. It argues that its right to due process was violated when the OGC did not conduct a preliminary conference pursuant to Section 5-1, Rule V of the 2006 SEC Rules of Procedure (2006 Rules)[4]. Appellant also argues that Appellee has no right to appropriate for its exclusive use the words "Manila" and "Southwoods"[5].

Appellee, on 27 September 2007, filed its *Reply Memorandum*[6] refuting all the arguments in Appellant's *Appeal*. Appellee prays for the dismissal of the instant *Appeal* on the ground that: 1.) Appellant's right to due process was not

[4] Pages 8-10 of Appellant's Memorandum of Appeal.
[5] Pages 10-19 of Appellant's Memorandum of Appeal.
[6] Dated 26 September 2007.

violated because the 2006 Rules are not yet effective at the time the case was submitted for decision[7]; 2.) the General Counsel was correct in ruling that Appellee has a prior right over the words "Manila Southwoods"[8]; 3.) the General Counsel was correct in ruling that the use of the words "Manila Southwoods" by Appellant will create confusion to the public[9].

Thereafter, Appellant, on 17 October 2007, filed a *Motion to Set Case for Oral Argument*[10] praying that its Appeal be set for oral arguments, pursuant to Sec. 11-7 of the 2006 Rules, to give the parties the opportunity to clarify their respective positions. Appellee filed its *Opposition*[11] arguing that the said motion is only intended to delay the resolution of the case.

The Commission *En Banc*, on 21 October 2010, resolved to deny Appellant's motion since there is already ample basis found on the parties' pleadings to decide the instant *Appeal*. Thereafter, the case was submitted for resolution[12].

The Issues

The issues to be resolved are whether or not Appellant's right to due process was violated when the OGC did not conduct a preliminary conference as provided in Sec. 5-1, Rule V of the 2006 SEC Rules; and whether or not OGC is correct in ruling that Appellee has acquired a priority right over the name "Manila Southwoods" and Appellant's corporate name is confusingly similar to Appellee's corporate name.

The Ruling

We find the instant *Appeal* bereft of merit.

Appellant's right to due process

Appellant argues that the OGC did not conduct the required preliminary conference provided under the Section 5-1, Rule V, 2006 Rules[13], which violates its right to due process. On the other hand, Appellee contends that the 2006 Rules was not yet in effect during the pendency of the proceedings and that the OGC could resolve the case below by a mere verification of the records and applying the relevant laws.

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[7] Paragraphs 12-15 of Appellee's Reply Memorandum.
[8] Paragraphs 16-28 of Appellee's Reply Memorandum.
[9] Paragraphs 29-33 of Appellee's Reply Memorandum.
[10] Dated 17 October 2007.
[11] Dated 09 November 2007.
[12] *Order* dated 21 October 2010.
[13] Sec. 5-1, Rule V, 2006 Rules. Preliminary Conference. – In any action and upon assignment by the Director of the Operating Department concerned, the Hearing Panel or Officer shall, in compliance with the existing rules on alternative dispute resolution, set the case for conference within ten (10) days after the last pleading allowed under Section 3-13 is filed or upon expiration of the period within which to file the reply or rejoinder mentioned therein. x x x.

We agree with Appellee's contention. Appellee's *Petition* was deemed submitted for decision by the OGC prior to the effectivity of the 2006 Rules. Based on record, Appellee filed its *Petition* with OGC on 15 September 2006. Thereafter, Appellant filed its *Answer* on 25 October 2006 and the Commission's Company Registration and Monitoring Department (CRMD) filed its *Comment* on 26 October 2006. Stated otherwise, Appellee's Petition was deemed submitted for resolution before the 2006 Rules took effect on 31 January 2007.

Moreover, it is expressly stated in the old rules, more particularly, Section 5-4, Rule V of the Revised Rules of Procedure 2000 of the Securities and Exchange Commission (2000 Rules) that:

> "Section 5-4. Hearings – Should the Hearing Officer find upon consideration of the pleadings, the affidavits and other evidences and position statements submitted by the parties that a judgment may be rendered thereon **without the need of a formal hearing, he may proceed to render judgment**."

As above-stated, the OGC, as hearing officer, has the discretion not to conduct a preliminary conference if in its judgment the pleadings and evidence presented by the parties are sufficient to render a judgment. Besides the parties are allowed under the 2000 Rules to amicably settle the case at any stage of the proceedings. In this case, the OGC's discretion is within the ambit of the 2000 Rules.

As to Appellant's argument on violation of due process, we do not agree. In *Orbase vs. Ombusdman, et al.*[14], the Supreme Court ruled that:

> "Anent petitioner's contention that she was denied due process, this too is devoid of merit. The CA correctly concluded that petitioner's right to due process was not violated. Due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. **Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments.** Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, filing charges against the person and giving reasonable opportunity to the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard; or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.**"

The foregoing doctrine takes even more meaning when the alleged facts of the case below can be quite easily verified from the records available with the OGC. In the instant case, Appellant actively participated in the proceedings

[14] G.R. No. 175115, 23 December 2009.

before the OGC. Appellant was given the opportunity to present its side, through the pleading it submitted to OGC. Clearly, OGC properly observed due process in resolving Appellee's *Petition*.

Appellee's right of priority over the name "Manila Southwoods" and if it confusingly similar to Appellee's corporate name

Section 18 of the Corporation Code 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."

In *Lyceum of the Philippines vs. Court of Appeals*[15], the Supreme Court interpreted the above-stated provision as:

> "Section 18 of the Corporation Code expressly prohibits the use of a corporate name which 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". **The policy behind the foregoing prohibition is to avoid fraud upon the public that will 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 corporation.**"

It is the Commission'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.[16]

To fall within the prohibition of the law, 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

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[15] 219 SCRA 610, 615 [1993].

[16] Ang Kaanib sa Iglesia ng Dios kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. vs. Iglesia ng Dios kay Cristo Jesus, Haligi at Suhay ng Katotohanan, G.R. No. 137592, December 12, 2001

(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. [17]

Appellant argues that OGC erred in ruling that Appellee has prior right over the name "Manila Southwoods". It claims that Appellee's mere use of the said name over the years does not vest a priority right. Furthermore, Appellant claims that the words "Manila" and "Southwoods" are generic and geographical terms which are incapable of exclusive appropriation. It also argues that its corporate name "Manila Southwoods Ladies Chapter, Inc." is not confusingly similar to Appellee's corporate name "The Manila Southwoods Golf and Country Club, Inc." because the former is a ladies association while the latter is a golf club.

On the other hand, Appellee contends that OGC was correct in applying the principle of *prius tempore potior jure* (first in time, stronger in right) to the instant case. It claims that since it registered with the Commission for at least fifteen (15) years prior to Appellant's registration, it has a superior right to use the words "Manila Southwoods" as part of its corporate name. Moreover, it asserts that OGC was correct in ruling that Appellant's corporate name is confusingly similar to Appellee's corporate name.

We rule in favor of the Appellee. As above-discussed, Section 18 of the Corporation Code expressly prohibits the use of a corporate name which is confusingly similar to an existing corporation. 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 the Court must look to the record as well as the names themselves[18]. It is settled that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur[19].

Since Appellee (registered in 1990) was incorporated prior to Appellant (registered in 2005), it is beyond debate that Appellee has a prior right over the name "Manila Southwoods".

Likewise, the words "Manila Southwoods" in Appellee's corporate name should be taken together and not separately. As correctly ruled by the OGC, this forms a distinctive name which serve to identify and differentiate Appellee from other registered entities. These words are not used in its geographical sense but are coined phrase to distinguish it from other corporations. It is obvious that in Appellee's corporate name, the word "Manila", does not describe or indicate a location because Appellee's golf club is located in Southwoods, Cavite. Thus, it is

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[17] 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].

[18] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et. al., GR No. 122174, October 3, 2002.

[19] Philips Export B.V. et. al. vs. Court of Appeals, et. al., GR No. 96161, February 21, 1992 citing 6 Fletcher [Perm Ed], pp. 107-108.

evident that Appellee's corporate name "Manila Southwoods Golf and Country Club, Inc." is an original name crafted by the Appellee.

In the case of *GSIS Family Bank vs. BPI Family Bank*[20] which has similar facts, the Supreme Court ruled that:

> "Petitioner cannot argue that the word "family" is a generic or descriptive name, which cannot be appropriated exclusively by respondent. "Family," as used in respondent's corporate name, is not generic. Generic marks are commonly used as the name or description of a kind of goods, such as "Lite" for beer or "Chocolate Fudge" for chocolate soda drink. Descriptive marks, on the other hand, convey the characteristics, function, qualities or ingredients of a product to one who has never seen it or does not know it exists, such as "Arthriticare" for arthritis medication.
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> Under the facts of this case, **the word "family" cannot be separated from the word "bank.**" In asserting their claims before the SEC up to the Court of Appeals, both petitioner and respondent refer to the phrase "Family Bank" in their submissions. **This coined phrase, neither being generic nor descriptive, is merely suggestive and may properly be regarded as arbitrary. Arbitrary marks are "words or phrases used as a mark that appear to be random in the context of its use. They are generally considered to be easily remembered because of their arbitrariness. <u>They are original and unexpected in relation to the products they endorse, thus, becoming themselves distinctive</u>.**" Suggestive marks, on the other hand, "are marks which merely suggest some quality or ingredient of goods. xxx The strength of the suggestive marks lies on how the public perceives the word in relation to the product or service."

Additionally, SEC Memorandum Circular No. 14, series of 2000 provides that "The name which contains a word identical to a word in a registered name shall not be **allowed if such word is coined or already appropriated by a registered firm**, regardless of the number of the different words in the proposed name, **unless there is consent from the registered firm of this firm** is one of the stockholders of partners of the entity to be registered." Based on the facts and evidence presented, Appellee did not consent to Appellant's usage of the words "Manila Southwoods".

Furthermore, Appellant argues that its name can be easily distinguished from Appellee's name because of the presence of distinct words such as "Ladies" and "Chapter". However, the concept of distinguishability has not yet been adopted in the Philippines. The prevailing doctrine is found on Section 18 of the Corporation Code which prohibits the use of a corporate name which is "identical or deceptively or confusingly similar" to an existing corporate name. Hence, if the Appellant has not obtained Appellee's permission/consent to

[20] G.R. No. 175278, 23 September 2015.

use/adopt the name "Manila Southwoods" as a portion of its own name, it is prohibited from using the same.

Finally, the presence of the phrase "Manila Southwoods" in both corporate names will likely cause confusion to the public because of present similarities and lack of other effective differentiating mediums or terms. Hence, the OGC was correct in granting Appellee's *Petition* and ordering Appellant to change its name by deleting the words "Manila Southwoods".

WHEREFORE, premises considered, the instant *Appeal* is hereby **DENIED** for lack of merit and the *Order* of the General Counsel dated 16 July 2007 is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 11 August 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE *
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

*On Official Business