Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ASIA-PACIFIC EYE CARE CENTER, INC.,
Appellant,

- versus -

SEC *En Banc* Case No. 12-12-274

ASIA PACIFIC EYE CARE SPECIALISTS, INC,
Appellee.

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DECISION

Pending before the Commission *En Banc* is the *Memorandum on Appeal*[1] filed on 12 December 2012 by Asia Pacific Eye Care Center, Inc. (**Appellant**) against Asia Pacific Eye Care Specialists, Inc. (**Appellee**) assailing the Order (**Assailed Order**) dated 21 November 2012 of the Office of the General Counsel (**OGC**). The pertinent portion of the disposition of the Assailed Order reads as follows:

> "**WHEREFORE,** premises considered, the instant petition is hereby **GRANTED.** Respondent-corporation ASIA-PACIFIC EYE CARE CENTER, INC. [Appellant] is hereby **DIRECTED TO CHANGE** its corporate name to another not deceptively similar or identical to the same already used by Petitioner-corporation ASIA PACIFIC EYE CARE SPECIALISTS, INC. [Appellee] within thirty (30) days from receipt of this Order. Failure to comply may constitute indirect contempt which will be punished accordingly, and may be a ground for the revocation of respondent's corporate charter. "

Appellant is a corporation duly registered on 03 October 2008 with the Commission under SEC Registration No. CS200815609. Its primary purpose is to "*diagnose and treat eye disease.*"[2] Its principal office is located at Binan, Laguna.[3]

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[1] Memorandum on Appeal dated 12 December 2012.
[2] Assailed Order, *p. 1.*
[3] Reply Memorandum dated 27 December 2012 and filed on 28 December 2012, par. 4.

Appellee is a corporation duly registered on 19 January 2007 with the Commission under SEC Registration No. CS200700273. Its primary purpose is to "*be the global leader in comprehensive evidence-based eye care provided by specialized professionals with the support of state of the art medical information technology.*"[4] Its principal office is located at East Avenue, Quezon City.[5]

Factual Antecedents

In June 2010, Appellee received reports and complaints that another eye clinic, Appellant, is operating under a "confusingly similar name".[6] Appellee also received reports that some of its clients had been mistakenly referred to Appellant by the Philippine Charity Sweepstakes Office (PCSO).[7]

On 23 August 2011, Appellee filed a *Petition* with the OGC against Appellant praying that an order be issued declaring, among others, said Appellant's corporate name is deceptively and confusingly similar to that of said Appellee's corporate name.[8]

After an exchange of pleadings,[9] the OGC issued an *Order* dated 27 January 2012 stating that both parties attended a preliminary conference on even date. However, during the preliminary conference, the parties failed to arrive at amicable settle but they were able to stipulate certain facts.[10]

In a *Manifestation and Motion* dated 16 February 2012, Appellant stated that it noticed that the *Order* dated 27 January 2012 of the OGC failed to include certain factual points which were stipulated by both parties, as follows: (i) that the reported complaints of Appellee's clients, as alleged in the *Petition*, pertain of Remedios Barrantes and Pedro Pernada; and (ii) that the relation between doctor and patient involves a relationship of trust and confidence between them. Thus, Appellant prays that the OGC re-examine and

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4 Assailed Order, *p. 1*.
5 Reply Memorandum dated 27 December 2012 and filed on 28 December 2012, par. 3.
6 *Id.*, par. 6.
7 Assailed Order, p. 1.
8 Reply Memorandum, Annex "2" (Petition dated 17 August 2011).
9 Answer with Counter-Claim dated 9 September 2011filed by Appellant; Reply dated 24 September 2011filed by appellee; and Rejoinder dated 21 October 2011 filed by Appellant.
10 Memorandum on Appeal, Annex "D" (Order terminating the Preliminary Conference dated 27 January 2012).

verify the transcript of stenographic notes (TSN) to determine whether there are additional stipulations entered into by the parties, and to amend its order if there are such stipulations.[11]

In response, Appellee stated in its *Counter Manifestation* that it received verbal complaints from its clients other than Remedios Barrantes and Pedro Pernada. Further, Appellee stated that there is no need to amend the *Order* dated 27 January 2012 since such manifestations are reflected in the TSN. Thus, Appellee prayed that the *Manifestation and Motion* be considered moot.[12]

Thereafter, Appellant filed its *Reply to the Counter Manifestation* reiterating its prayer that the OGC re-examine the TSN to determine whether there are additional stipulations entered into by the parties, and to amend the *Order* dated 27 January 2012 if there are additional stipulations.[13]

On 21 November 2012, the OGC issued the Assailed Order which ruled that:

> "As to the first requisite, there is substantial evidence to show that **petitioner-corporation [Appellee] has been using the words "Asia Pacific Eye Care" as part of its corporate name since its registration with the SEC on 19 January 2007, which is more than a year earlier than when respondent-corporation [Appellant] was registered on 03 October 2008**. It must be borne in mind that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. For this reason, petitioner-corporation has acquired such right prior to that of respondent-corporation over the use of the words "Asia Pacific Eye Care" as part of its corporate name.
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> x x x
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> A unique corporate name was formed when "Asia Pacific" is used alongside the other words in petitioner-corporation's name in the particular order or arrangement in which they appear. One would wonder why out of the many words and combinations thereof available to the public, respondent-corporation chose the same with only a slight modification. In *Coffee*

[11] *Id.*, Annex "E" (Manifestation and Motion dated 26 February 2012, pars. 2 and 3).
[12] *Id.*, Annex "F" (Counter Manifestation dated 1 March 2012, pars. 4 and 5).
[13] *Id.*, Annex "G" (Reply to the Counter Manifestation dated 15 March 2012).

Partners, Inc. vs. San Francisco Coffee & Roastery Inc., the Supreme Court acknowledged that geographic or generic words are not, *per se*, subject to exclusive appropriation, however, the combination of words comprising as a trade name used in business is protected against infringement or matters related to the same business to avoid confusing or deceiving the public. Accordingly, insofar as matters related to eye care and eye treatment is concerned, the combination and arrangement of the words "Asia Pacific Eye Care" in petitioner-corporation's name is protected by law against infringement to avoid confusing or deceiving the public.

As to the second requisite, it must be borne in mind that the test in determining the existence of confusing similarity in corporate names is whether the similarity is such as to mislead a person using ordinary care and discrimination. In so doing, we must look to the records as well as the names themselves.

In the instant case, both **petitioner and respondent corporations are engaged in the similar business providing medical services in the field of Opthalmology** and are **dealing with the same clientele**, i.e. those that require eye care and eye treatment. 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. Hence, the public, particularly **the PCSO, has been confused or misled into believing that both corporations are either the same or at the least associated with one another**. But even without proof of actual confusion between the corporate names, it suffices that confusion is probably or likely to occur.

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For these reasons, it would appear that **the two corporate names are confusingly and deceptively similar** such that **<u>respondent-corporation which was registered after the registration of petitioner-corporation should change its corporate name</u>** pursuant to its undertaking. A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public."

Hence, OGC directed Appellant to change its corporate name to another corporate name, which is not deceptively similar or identical to the corporate name that is used by Appellee.

Aggrieved, Appellant filed the instant appeal.

Appellant, in its *Memorandum on Appeal*, argues the following: (i) the OGC erred when it issued the Assailed Order without resolving the *Manifestation and Motion* since the issues posed therein are determinative and material to the resolution of the main issue; (ii) the OGC erred when it held that the terms "Asia Pacific" and "Eye Care" are not a generic terms; (iii) the OGC erred when it disregarded the application of the provisions of SEC Memorandum Circular No. 05, series of 2008 (**SEC MC 05-08**) since it failed to consider the distinctive word "Center" in the corporate name of Appellant; (iv) the OGC erred when it held that the doctrine of secondary meaning cannot be invoked in this case; (v) the OGC erred when it relied on conjectures and surmises in support of its conclusion that "confusion is probably or likely to occur"; and (vi) the OGC erred when it denied Appellants' reliefs it prayed for.

In response, on 28 December 2012, Appellee filed its *Reply Memorandum*[14] arguing that the Appellant's corporate name is confusingly or deceptively similar to the corporate name of the former. Appellee further insists that the *Order* dated 27 January 2012 rendered the *Manifestation and Motion* as moot and academic. Thus, Appellee prays for the following: (i) the appeal be denied for lack of merit; (ii) Appellant be directed to change its corporate name; and (iii) should Appellant fail to comply with the foregoing, it be punished with indirect contempt and/or its corporate charter be revoked.

Thereafter, Appellant filed, on 21 January 2013, its *Comment [to Reply Memorandum]*[15] and reiterated its argument that the term "Asia Pacific" and "Eye Care" are generic terms. Thus, it again prays that the Assailed Order be set aside, and that Appellee pay damages to the former.

Issue

The main issue to be resolved is whether or not the OGC is correct in ruling that Appellant should change its corporate name since it is confusingly or deceptively similar to that of Appellee.

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[14] Dated 27 December 2012.
[15] Dated 14 January 2013.

Ruling

Section 18 of the Corporation Code provides that no corporate name may be allowed by the 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. 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; or (c) patently deceptive, confusing or contrary to existing law.[16]

In the adoption of a corporate name, SEC MC 05-08[17] provides that:

> "3. b) If the name applied for is similar to that of a registered corporation or partnership, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name;
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> However, **the addition of one or more distinctive words <u>shall not be allowed</u> if the registered name is <u>coined or unique</u>** unless the board of directors or majority of the partners of the subject corporation or partnership gives its consent to the applied name;"

Applying the foregoing principles, we now rule on the merits of the case. With respect to the *first requisite,* it has been held that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption.[18] We have consistently held that priority in the adoption and registration of a corporate name confers upon the registrant a vested right to the exclusive use thereof.[19]

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[16] *Industrial Refactories Corporation of the Philippines v. Court of Appeals, et al.,* G.R. No. 122174, 3 October 2002, citing *Philips Export B.V., et al. v. Court of Appeals, et al.,* G.R. No. 96161, 21 February 1992.
[17] SEC MC No. 05-08 was in force at the time Appellant registered with the Commission on 3 October 2008.
[18] *Id.*
[19] *Mechanical Handling Equipment Co. Inc. v. Mechanical Handling Engineer (Philippines), Inc.,* SEC-AC No. 452, 5 December 1994.

In the case at bar, we agree with the OGC that Appellee acquired a prior right over the corporate name since it registered its name over one (1) year ahead of Appellant. Besides, Appellant did not assign as one of the errors this factual finding of the OGC. In fact, the Appellant is correct when it alleged, in its *Appeal Memorandum*, that findings of facts by the operating departments are generally not disturbed by the Commission *En Banc.*[20]

As to the *second element*, in determining the existence of confusing similarity in the corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination.[21] In this case, Appellant argues that the words "Asia Pacific" and "Eye Care" in Appellee's corporate name are generic terms. As to "Asia Pacific", Appellant claims that it is a generic term since it refers to a geographical location; on the other hand, as to "Eye Care", Appellant also avers that it is a generic term since it refers to a medical service or treatment.

We concur with OGC that in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery Inc.*,[22] the Supreme Court acknowledged that geographic or generic words are not, *per se*, subject to exclusive appropriation, however, the combination of words comprising as a trade name used in business is protected against infringement on matter related to the same business to avoid confusing or deceiving the public.

Furthermore, the recent Supreme Court case entitled *GSIS Family Bank – Thrift Bank v. BPI Family Bank*[23] elaborated on generic terms or marks. The Supreme Court ruled that 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.

The court further stated that arbitrary marks are "words or phrases used as a mark that appear to be random in the context of its use. They are

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[20] Records, page 687.
[21] *Philips Export B.V. vs. Court of Appeals*, 206 SCRA 457, [1992].
[22] G.R. No. 169504, 3 March 2010.
[23] G.R. No. 175278, 23 September 2015.

generally considered to be easily remembered because of their arbitrariness. They are original and unexpected in relation to the products they endorse, thus, becoming themselves distinctive."

Here, the phrase "Asia Pacific Eye Care" is not a generic nor a descriptive term but rather a coined or fanciful phrase. When the words "Asia Pacific" and "Eye Care" are put together, there can be no expected relation between such words. Further, the term "Asia Pacific" combined with the term "Eye Care" cannot be used to define a medical treatment or service; it is a COINED PHRASE, neither being generic nor descriptive, which is merely suggestive[24] and may properly be regarded as arbitrary and random in its context. Thus, the words "Asia Pacific" and "Eye Care" are not generic terms but coined or unique phrase since it is random in its context and arbitrary.

Next, Appellant argues that the term "Asia Pacific" is of widespread use. However, such term is not descriptive of the business location of parties, considering that it is not part of a geographical area in the Philippines where any of the parties may set up their business. As earlier stated, the choice by Appellee in employing the term "Asia Pacific" with "Eye Care" is arbitrary and random in its context. Clearly, the term "Asia Pacific" is not a generic term as argued by Appellant.

Likewise, Appellant argues that the OGC failed to consider that the former added the distinctive word "Center" in its corporate name, pursuant to SEC MC 05-08. However, the addition of the word "Center" in its corporate name is not allowed under the Section 3 (b), SEC MC 05-08 since the Appellee's corporate name "Asia Pacific Eye Care" is a coined or unique name as above stated. Further, the both parties employ the dominant words "Asia Pacific Eye Care" in their respective corporate names, which, as earlier stated, is arbitrary, unique and distinctive. Accordingly, the word "Center" in the Appellant's corporate name is not sufficient to distinguish that from the said corporate name of the Appellee.

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[24] In *GSIS*, the Court defined "Suggestive marks" as "marks which merely <u>suggest</u> 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."

Appellant also argues that the OGC erred when it held that the doctrine of secondary meaning[25] cannot be invoked in this case. Appellant claims that Appellee failed to establish that it had used such words for so long a period such as to bar others from the use of such words in its corporate name. However, as correctly pointed out by the OGC, the doctrine of secondary meaning does not apply in this case as it presupposes that, and applies only when, the term is originally generic.

Additionally, Appellant argues that the OGC's conclusion that "confusion is probably or likely to occur" is based on speculation or conjecture. However, as we have ruled in similar cases, 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 records as well as the names themselves.[26] It is settled that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.[27] This principle is further reiterated in the *GSIS case*[28] wherein that even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur. In the instant case, the likelihood of confusion will arise since Appellee and Appellant names are similar or are substantially the same which may lead the general public to believe that the parties are the same or associated or affiliated

In fact, there is already confusion as found by the OGC when the PCSO mistakenly referred the clients of Appellee to Appellant's eye care clinic. The OGC further held that the public, particularly the PCSO, has been confused or misled into believing that that both corporations are either the same or least associated with each other.[29]

It is of no moment that the practice of medicine is not a "business or trade" which creates a relationship of trust and confidence, as argued by

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[25] Under the doctrine of secondary meaning, a word or phrase originally incapable of exclusive appropriation with reference to an article in the market, because geographical or otherwise descriptive might nevertheless have been used so long and so exclusively by one producer with reference to this article that, in that trade and to that group of the purchasing public, the word or phrase has come to mean that the article was his produce (Lyceum of the Philippines, Inc. v. Court of Appeals, et al., G.R. No. 101897, 5 March 1993).
[26] Note 16, Supra.
[27] Note 21, Supra.
[28] Note 23, Supra.
[29] Assailed Order, pp. 1 and 5.

Appellant. Appellant claims that a patient will not be confused since he will only seek treatment from his own doctor. However, the argument is misplaced since the public, particularly the PCSO, has been confused.

Appellant further argues that it does not have the same business as that of the Appellee. It claims that Appellee is engaged only in the diagnosis of eye diseases; while it is engaged in in "Lasik Eye Treatment" and "laser eye surgery". However, both parties are still in engaged in the similar business of providing medical services in the field of Opthalmology[30], which is likely to cause confusion and causes confusion to the public.

As a matter of fact, during the Preliminary Conference, the Appellant's counsel admitted that the letter of PSCO, which was presented by Pedro Pernada to said Appellant and referred to by that office.[31] In which case, Mr. Pernada was able to receive an eye treatment from Appellant which should have been rendered by Appellee. This indicates that the services rendered by Appellant are the same as the Appellee considering that they are engaged in the same line business.

Lastly, Appellant argues that the OGC erred in "hastily" rendering the Assailed Order without resolving the *Manifestation and Motion*, which requested for an amendment of the preliminary conference *Order* dated 27 January 2012. Appellant requested, among others, that the factual stipulations (*i.e.*, the reported complaints of Appellee's clients, alleged in the Petition, pertain to that of Remedios Barrantes and Pedro Pernada; and the relation between doctor and patient involves a relationship of trust and confidence between them) be included. Appellant claims that the resolution of the said manifestation is necessary since it is determinative of the main issue.

However, the main issue to be resolved is whether the Appellant's corporate name should be changed. As above stated, the Commission holds that Appellant's corporate name must be changed since it is deceptively and confusingly similar to that of the Appellee based on the erroneous referral by

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[30] Branch of medical science dealing with the structure, functions, and diseases of the eye - https://www.merriam-webster.com/dictionary/ophthalmology, last accessed 8 March 2017.
[31] Records, p. 10.

the PSCO. Even if the Commission considers such factual stipulations, both corporate names are still deceptively and confusingly similar considering that the public, particularly PSCO mistakenly referred the clients of Appellee to Appellant.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Office of the General Counsel's *Order* dated 12 November 2012 directing Appellant ASIA PACIFIC EYE CARE CENTER, INC. to: 1.) **CHANGE OR MODIFY** its corporate name by excluding and/or dropping the words "ASIA PACIFIC EYE CARE" therein, and amending its Articles of Incorporation; 2.) file a compliance report within the said 30-day period; and 3.) Failure to comply constitutes CONTEMPT which will be punished accordingly, and may also be a ground for the REVOCATION of Appellant's Certificate of Incorporation, is hereby affirmed.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for proper notation and action.

SO ORDERED.

Pasay City, 19 October 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner