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

PANCITERIA LIDO CHINESE CUISINE, CO.,
Appellant,

- versus -

COMPANY REGISTRATION AND MONITORING DEPARTMENT AND SALIDO FOODS & BEVERAGES CORP.,
Appellees.

SEC En Banc Case No. 07-18-448
Change of Corporate Name
Promulgated: 07 December 2023

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DECISION

Before the Commission *En Banc* is the *Appeal* dated 6 July 2018 (the "Appeal") filed on even date by PANCITERIA LIDO CHINESE CUISINE, CO., (the "Appellant"), seeking the reversal and setting aside of the Order dated 11 December 2017 (the "Assailed Order") issued by the Commission's Company Registration and Monitoring Department (CRMD), which was affirmed in the latter's Resolution dated 22 May 2018, dismissing Appellant's *Petition for Change of Business Name* (the "Petition"), the dispositive portion of which reads, thus:

> "WHEREFORE, premises considered, the Petition is hereby DISMISSED for lack of merit."

RELEVANT FACTS

Appellant PANCITERIA LIDO CHINESE CUISINE, CO. (the "Appellant") is a partnership that was registered with the Commission on 11 February 2009 under SEC Registration No. PG 200901574. Panciteria Lido's principal address is at No. 8 Bayanihan Street, West Triangle, Quezon City.

On 17 July 2014, the Commission approved the Amended Articles of Partnership of Appellant to include the following business names: PANCITERIA LIDO; KAPIHAN SA LIDO; NEW LIDO RESTAURANT; LIDO CAFÉ; LIDO CATERING; and LIDO COCINA TSINA. The appellant is also the owner of the trademark LIDO COCINA TSINA, which was registered with the Intellectual Property Office (IPO) of the Philippines under Trademark Registration No. 4-2012-014828 on 27 September 2013.

Appellee SALIDO FOODS & BEVERAGES CORP., (the "Appellee") doing business under the name and style of SALIDO RESTAURANT, is a corporation duly organized and existing under Philippine laws, having been registered with the Commission on 31 August 2010 with SEC Registration No. CS201013978. Appellee's principal office address is at 158 N. Domingo Street, San Juan City.

In its Petition, Appellant maintained that the use by the Appellee of the word "Salido" as part of its corporate name violates Section 18 of the Corporation Code[1] as it is confusingly similar to Appellant's partnership name. The appellant argued that the requisites prescribed in *Philips Export B.V. v Court of Appeals* (the "Philips Export Case") are both present considering that it has acquired prior right over the word "Lido" being the earlier registrant, and has presented evidence showing that the use by Appellee of the word "Lido" as part of its corporate name has actually confused the public.[2] The appellant then concluded that this warrants the issuance of an order directing the Appellee to remove the word "Salido" as part of its corporate name.

Appellee countered by arguing that Appellant has no right to use the words "Panciteria Lido" as part of its name because it is not the owner of the mark, invoking for this purpose the Decision dated 19 November 2010 of the Intellectual Property Office[3], and that the word "Salido" in its corporate name is not confusingly similar to that of Appellant's "Lido" as they are allegedly distinguishable, and the public has allegedly regarded the restaurants operated by the parties as distinct from each other.[4] Appellee thus maintained that the dismissal of the Petition is in order as the same is bereft of merit.

In the Assailed Order, the CRMD, applying the doctrine in the Philips Export Case, found that the Appellant has acquired a *prima facie* right over its partnership name which was recorded on 11 February 2009, pursuant to the priority of adoption rule. However, the CRMD nonetheless dismissed the Petition on the basis of the finding Appellee's corporate name, "SALIDO FOODS & BEVERAGE CORP." is not confusingly similar to Appellant's partnership name, "PANCITERIA LIDO CHINESE

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[1] Section 17 of the Revised Corporation Code.
[2] See Pars. 22, 28, and 29 of the Petition dated 1 April 2016
[3] Par. 11 of the Answer dated 16 May 2016
[4] Par. 16 of the Answer dated 16 May 2016

CUISINE CO." The CRMD specifically found and held that Appellee did not appropriate the term "Lido" in adopting and using it as part of its corporate name because "Lido" is a coined term which is unique in itself and is thus capable of exclusive use and appropriation. The CRMD likewise held that the purported confusion presented by the Appellant was brought about by extraneous circumstances independent of the partnership name and corporate name of the parties, and relate to the use of their respective marks. Hence, the reliefs sought to avoid confusing similarity in the trademarks should be made with the IPO by the filing of a petition for cancellation of registration of a mark or by instituting a civil action for infringement both in accordance with the Intellectual Property Code.

Appellant maintained in its Appeal that the CRMD committed reversible error in dismissing its Petition arguing that the evidence shows that the word "Salido" is not a coined word capable of exclusive appropriation, and its use by Appellee as part of its corporate name violates Section 18 of the Corporation Code because it is confusingly similar to Appellant's registered name, which is also one that is already protected by law.

On 13 August 2018, the Appellant filed its Compliance pursuant to the Order to File Amended Appeal Memorandum dated 16 July 2018, where it submitted an Amended Appeal Memorandum revising the caption of the case and attaching thereto a Verification and Certification of Non-Forum Shopping.

On 24 August 2018, the Appellee filed its Comment/Opposition (the "Comment") to the Appellant's Compliance, praying for the dismissal of the Appeal on the ground that it failed to comply with Sections 3-4 and 3-7 of the Rules of Procedure of the Securities and Exchange Commission (the "Rules").

ISSUES

(A) Whether Appellant's failure to comply with the provisions of Rule III, Sections 3-4 and 3-7 of the Rules warrants the dismissal of the instant Appeal.

(B) Whether the CRMD committed reversible error in holding that Appellee's corporate name, SALIDO FOODS & BEVERAGES CORP. is not deceptively or confusingly similar to Appellant's PANCITERIA LIDO CHINESE CUISINE CO., on the basis of the finding that the term "Lido" is a coined word which can be exclusively appropriated.

RULING

The Commission finds merit in the Appeal.

I. Appellant substantially complied with the Rules requiring the submission of Verification and Certification Against Forum Shopping.

In their Comment, Appellees argued that no partnership meeting was conducted in the principal office of the partnership as provided in the Certificate of Partnership Resolution on the ground that Ms. Annie Alipio resides in Toronto, Canada.[5] Appellees thereafter concluded that the Appeal is dismissible for its failure to comply with the requirement of Section 3-7 of the Rules considering that it was Appellant's lawyer who signed the verification and certification against forum shopping.[6]

The Commission does not share Appellee's position and conclusion.

Section 3-7, Part V, Rule III of the Rules provide:

> "The Appeal Memorandum and Comment to the Appeal shall be verified in the same manner as a verified answer under Section 3-3, Rule III of Part II of these Rules."

The purpose of requiring a pleading to be verified is exact an assurance from the relevant party that the allegations in the pleading have been prepared in good faith or are true and correct, not mere speculations.[7] On the other hand, the Supreme Court explained the purpose for requiring a certification against forum shopping in *Fontana Development Corp. v. Vukasinovic*[8], thus

> "The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against

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[5] Pars. 3 and 5 of the Comment/Opposition dated 23 August 2018
[6] Par. 5 of the Comment/Opposition dated 23 August 2018
[7] *Novelty Philippines, Inc. v. Court of Appeals*, G.R. No. 146125, [September 17, 2003]
[8] G.R. No. 222424, [September 21, 2016]

forum shopping, and any violation of these rules results in the dismissal of a case."

Over the years, the cases involving non-compliance with the verification and certification requirement that have been elevated to the Supreme Court resulted in the formulation of guidelines which have become settled in jurisprudence. We find these guidelines expounded in *Fernandez v. Villegas*[9], to wit:

> The Court laid down the following guidelines with respect to noncompliance with the requirements on or submission of a defective verification and certification against forum shopping, viz.:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
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> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."
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> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
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> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for

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[9] G.R. No. 200191, [August 20, 2014]

> reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[37] (Emphases supplied)

Moreover, in *SM Land, Inc. v. City of Manila*[10] (the "SM Land Case"), the Supreme Court emphasized the policy that rules of procedure, which include the requirement on verification and certification against forum shopping, are used to effectively dispense justice, hence, should not be interpreted with such absolute literalness as to defeat its own ultimate and legitimate objectives, thus:

> "It must be kept in mind that while the requirement of the certification of non-forum shopping is mandatory, nonetheless, the requirements must not be interpreted too literally and, thus, defeat the objective of preventing the undesirable practice of forum shopping.
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> **Time and again, this Court has held that rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.**
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> In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping.
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> In a number of cases, this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make the strict application of the rule clearly unjustified. This Court ruled that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule." (Emphasis supplied)

Relative thereto, it is well worth pointing out that the instant case is an administrative action filed with the Commission, an administrative body which is not bound by strict and rigid application of the rules.[11]

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[10] G.R. No. 197151, [October 22, 2012]

[11] "It is well-settled that "the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. **A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.**" "Indeed, the

Thus, the 2016 Rules specifically provide that *"**[t]hese Rules shall be liberally construed and administered to promote public interest**, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission **and to carry out the objectives of the laws it is mandated to implement**."*

In the instant case, the evidence on record shows that Appellants subsequently submitted the Verification and Certification executed by Mark Anthony Ong Wu on the basis of the Certificate of Partnership Resolution. This rendered Appellant compliant with Section 3-7, Part V, Rule III of the Rules. The liberal application of the Rules requires, and this Commission so holds, that the Verification and Certification executed by Mark Anthony Ong Wu should be considered as substantial compliance with such Rules if only to ensure that the matter relating to the implementation of Section 18 of the Corporation Code which is the main issue in this case, be passed upon for the promotion of public interest.

The Commission also holds that the issue relating to the conduct of the partners meeting which resulted in the execution of Certificate of Partnership Resolution is immaterial in the absence of a showing that the partners, or either them, assailed the same. Again, the liberal application of the Rules to ensure that this Commission is effectively able to carry out the objectives, and implement the provisions of the RCC mandates that the Verification and Certification executed by Mark Anthony Ong Wu be considered as substantial compliance. Applying the pronouncement of the Supreme Court in the SM Land Case, this is an exercise by the Commission of its inherent power to suspend its own rules in the interest of substantial justice and to implement the RCC which it is mandated to administer, to wit:

> "In fact, **this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.**" (Emphasis supplied)

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primordial policy is a faithful observance of [procedural rules], and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." **This is especially true with quasi-judicial and administrative bodies**, such as the IPO, **which are not bound by technical rules of procedure**. (Emphasis supplied) [*Birkenstock Orthopaedie GMBH and Co. vs Philippine Shoe Expo Marketing Corporation.*, G.R. No. 194307, November 20, 2013]

II. Appellee's use of the word Salido as part of its corporate name is confusingly similar to Appellant's name.

In the Assailed Order, the CRMD dismissed the Appellant's Petition on the basis of a finding that the Appellee's corporate name is not confusingly similar to the Appellant's partnership name.

The Commission disagrees with the finding of the CRMD as the same is not supported by the evidence on record.

Section 18 of the Corporation Code[12] expressly 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." (Emphasis supplied)

The policy underlying the prohibition in Section 18 of the Corporation Code on the use of corporate names or a part thereof that are "*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*" without the consent of the registered owner 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.[13]

There is an important distinction between a corporate name and an individual name in respect to the manner of their acquisition. A corporation acquires its name by choice and is thus accorded a wide latitude and discretion to create or adopt one that is unique (and not one that is already appropriated by a senior corporation), while an individual's name is thrust upon him.[14] It is in this context that the use of corporate names is regulated, and corporations are required to specifically undertake to modify their names if the same is found to be

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[12] Section 17 of the Revised Corporation Code.
[13] *De La Salle Montessori International of Malolos, Inc. v. De La Salle Brothers, Inc.* (G.R. No. 205548, February 7, 2018)
[14] Standard Oil Co. of N.M. vs Standard Oil Co. of Cal., 13 U.S.P.Q. 76

confusing, deceptive, or violative of existing laws. Hence, in *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus*[15], the Supreme Court held that entities found to be using corporate names that are either identical, deceptively or confusingly similar to one used by an existing corporation assume the risk of being directed to change the same for being violative of Section 18 of the Corporation Code, 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, whether a business or a nonprofit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, 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 supplied)

In relation to the foregoing, the Supreme Court ruled in *Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et al.*[16] that the prohibition on the use of corporate names that violates the rights of others and misleads the public under Section 18 of the Corporation Code applies when the two (2) requisites are shown to be present, 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.

As regards the <u>first requisite</u>, the Court has consistently applied the priority of adoption rule which reckons the 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. Thus, in *Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc.*[17], 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

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[15] G.R. No. 137592, December 12, 2001
[16] GR No. 122174, October 3, 2002 citing Philips Export B.V. vs. Court of Appeals 206 SCRA 457, 463 [1992]
[17] G.R. No. 184008, August 3, 2016

"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."

The reason for this lies in the fact that before an entity is registered with the Commission, the corporate name cannot as yet be used as there is no corporation to speak of. The foregoing finds support in Section 19 of the Corporation Code which specifically provides the exact moment when a corporation commences to have corporate existence and uses its corporate name i.e. from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal, thus:

"A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law." (Emphasis supplied)

On the basis of the foregoing parameters, We agree with the CRMD that Appellant has acquired prior right over the use of its partnership name which includes the word "Lido" on the ground that Appellant was registered on 11 February 2009, or ahead of Appellee which was only registered on 31 August 2010. Consequently, being the prior registrant, Appellant has acquired the right to the use of its partnership name under the principle of *prius tempore potior jure* or first in time, stronger in right.

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.[18]

More importantly, the Supreme Court laid down the rule in *GSIS Family Bank - Thrift Bank v. BPI Family Bank*[19], that the probability or the likelihood of confusion suffices to bar any corporation from

[18] Philips Export B.V. et al. v. Court of Appeals et al., G.R. No. 96161, 21 February 1992
[19] G.R. No. 175278, September 23, 2015

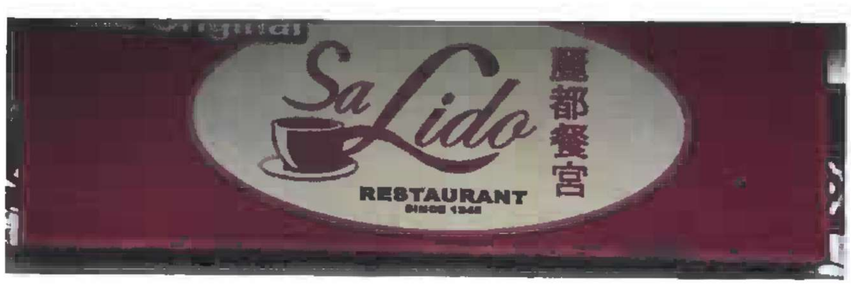
using/adopting as its corporate name, one that is already registered, including word(s) that forms part thereof, to wit:

> "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 even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur.**" (Emphasis supplied)

Guided by, and applying the foregoing jurisprudential rules, this Commission holds that the CRMD committed reversible error in finding that Appellee's use of the word "Salido" as part of its corporate name did not amount to an appropriation of the term "Lido" because the term "Salido" is a coined term which is unique in itself and is thus capable of exclusive appropriation by Appellee.[20]

A careful examination of the records of the case will show that Appellee admitted that the term "Lido" had its origin in a Fujian region and, in relation to the restaurant operation, the word/concept "Lido" is specifically important as it is associated to King Si Biak who owned secret recipes[21] which brought success to Panciteria Lido from its humble beginnings.[22]

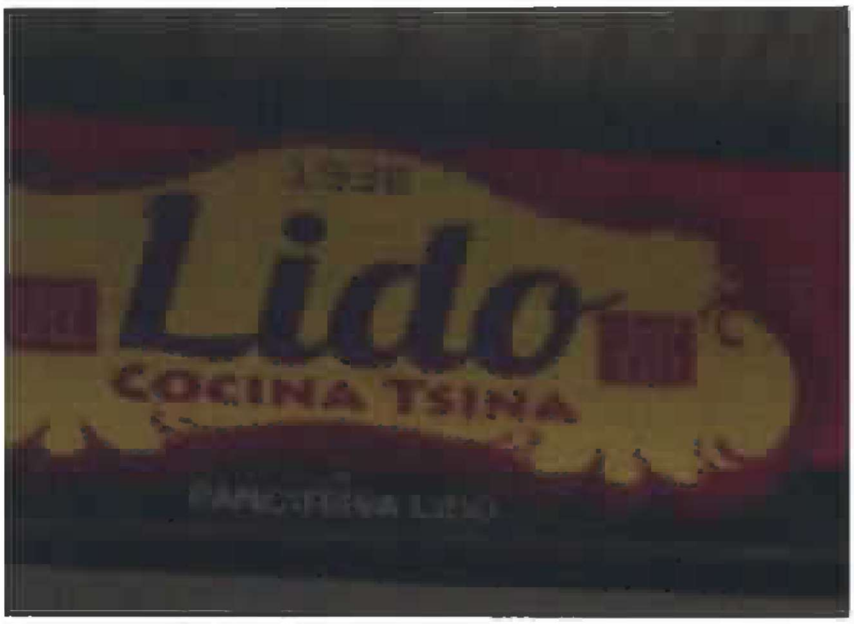
Thus, it is notable that Appellee emphasizes and gives prominence to the term "Lido" in the word "Salido", to wit:



Meanwhile, Appellant's uses and presents "Lido", a word that is part of its registered name as follows:

[20] See Page 8 (Par. 4) of the Assailed Order
[21] Par. 2 of the Answer dated May 16, 2016
[22] Par. 15 of the Answer dated May 16, 2016

x--x



On the basis thereof, and considering the evidence on record relating to the actual use by Appellee of "Salido", We hold that the adoption by Appellee of the word "Salido" as part of its corporate name was made with the clear intent of being able to use the word "Lido" which is part of the registered name of Appellants. This is supported by the fact that in its signages, emphasis and prominence is given by Appellee to the word "Lido"[23] such that together with "Sa" before it, the clear message conveyed to the public is that they are dining "at Lido" whenever they are Appellee's restaurants. Taken as a whole, and without the word "Lido" being emphasized and given prominence, the word "Salido" will certainly not add value to the restaurant business of Appellee. This is because only "Lido" is associated with the recipes and tasty food of King Si Biak a.k.a. Mr. Lido.

Thus, contrary to the finding of CRMD that "Salido" is a coined word, the adoption and the actual use of the same by Appellee was from the beginning, violative of Section 18 of the Corporation Code because it was calculated and made for no other purpose but to facilitate Appellee's use and appropriation of the term "Lido" which, it admitted, is related to the restaurant serving the secret recipes of King Si Biak who was also known as Mr. Lido.

Consequently, this Commission holds that the use and appropriation by Appellee of the word "Salido" constitutes a violation of Section 18 of the Corporation Code as the same was intended to facilitate and justify the use of "Lido" which mislead the public into the belief that

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[23] Par. 18 of the Answer

Appellee's restaurants are owned and operated by Appellants[24], a matter that was proven by substantial evidence. Moreover, even without such proof of actual confusion between the parties' names, the position of this Commission on the matter will not change on the ground that, as established in jurisprudence, it suffices that confusion is probable or likely to occur. Relative thereto, the High Court emphasized in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*[25], that the likelihood of confusion is higher when the parties are engaged in the same business, to wit:

> "**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." (Emphasis supplied)

The Commission also finds that the use by Appellee of "Salido" as part of its corporate name violates Memorandum Circular No. 14 s. 2000 (MC 14) as the same is misleading and confusingly similar to the Appellant's name, to wit:

> "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)

Moreover, the Commission does not agree with the argument that the issue on the purported confusion on the parties' names is a matter proper to the IPO because it was brought about by extraneous circumstances independent such names. The evidence showed that the use and appropriation by Appellee of its corporate name was specifically intended and calculated to facilitate and enable it to use "Lido", which has mislead and will continue to mislead the public. A decision rendered by the IPO on an administrative case for violation of the Intellectual Property Code will not necessarily stop or prevent fraud on the public in relation to the use of a confusingly similar or misleading corporate name. As long as Appellee continues to have access to the use of its corporate name, it can continue to use the term "Lido", to the prejudice of the public.

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[24] See Annex "I" of the Petition
[25] G.R. No. 169504, March 3, 2010

In a similar manner, a corporation or partnership has no right to use a term/word as part of its name if the same is already part of the registered name, <u>and</u> such use will mislead or confuse the public, even if the registered name is not registered with IPO as a trademark or tradename. The reason for this is that both the letter and intent of Section 18 of the Corporation Code proscribes the <u>use</u> of a corporate name which is misleading/confusing <u>or</u> is likely to mislead/confuse the public, and it is the duty of this Commission to implement this for the protection of the public.

While it is arguable, as observed by the CRMD, that on its face, the words "Lido" and "Salido" might still pass as not confusingly similar, however, the Commission finds that the evidence on record showing Appellee's real intent in using "Salido" i.e. to use and appropriate "Lido" justifies the exercise of its regulatory power to implement Section 18 of the Corporation Code and to prevent the evils that it seeks to avoid which was explained in *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus* to wit:

> "At any rate, **the SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC 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**." (Emphasis supplied)

Relative thereto, the Commission is mandated in Par. 14 of MC 14 to disallow the use of names which, in its judgment, are misleading or deceptive, to wit:

> "Notwithstanding the foregoing, **the Commission shall, for the protection of the public interest and other justifiable causes, disallow the use of names that, in its judgment, are misleading, deceptive**, confusingly similar to a registered name, or contrary to public morals, good customs and public policy." (Emphasis supplied)

The Commission will be remiss of its duty to protect the public if it will continue to allow Appellee to use and appropriate "Salido" as part of its corporate name, fully aware based on the evidence on record, that such use was intentionally and carefully made for no other purpose but to have access to the use of the term "Lido" which it accorded prominence and is central to its corporate name.

Finally, it should be emphasized that in relation to the effective implementation of Section 18 of the Corporation Code, Appellee made an express undertaking in its Articles of Incorporation to change its corporate name in the event another person, firm, or entity has acquired a prior right to use the said firm name or one deceptively or confusingly similar to it, immediately upon receipt of notice or directive from the Commission. In light of the findings of this Commission, the propriety of requiring the Appellee to comply with this undertaking is in order.

WHEREFORE, premises considered, the instant *Appeal* is hereby **GRANTED**. The Assailed Order of the Company Registration and Monitoring Department dismissing Appellant's *Petition to Change Corporate Name* against Appellee is hereby **REVERSED and 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

On Official Business