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The Department of Labor and Employment Region IV's Resolution dated May 8, 2002 in RO400-1108-RI-018-087 and the Department of Labor and Employment's Orders dated March 12, 2003, March 23, 2004, and July 19, 2004 are all **SET ASIDE**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,*[**] and *del Castillo, JJ.,* concur.

THIRD DIVISION

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

GSIS FAMILY BANK – THRIFT BANK [Formerly Comsavings Bank, Inc.], *petitioner, vs.* **BPI FAMILY BANK,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CORPORATE NAME; TWO REQUISITES THAT MUST BE PROVEN IN ORDER TO FALL INTO THE PROHIBITION OF THE LAW ON THE RIGHT TO EXCLUSIVE USE OF A CORPORATE NAME; PRESENT IN CASE AT BAR.— In *Philips Export B.V. v. Court of Appeals*, this Court ruled that to fall within the prohibition of the law on the right to the exclusive use of a corporate name, 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

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[*] Designated acting member per S.O. No. 2215 dated September 22, 2015.

[**] Designated acting member per S.O. No. 2170 dated September 10, 2015.

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(a) identical or (b) deceptive 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. These two requisites are present in this case.

2. **ID.; ID.; ID.; RESPONDENT HAS THE PRIOR RIGHT OVER THE USE OF CORPORATE NAME.—** Applying the priority of adoption rule to determine prior right, this Court said that RCP has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant. In arriving at this conclusion, the Court considered that RCP was incorporated on October 13, 1976 and since then continuously used the corporate name "Refractories Corp. of the Philippines." Meanwhile, IRCP only started using its corporate name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985. In this case, respondent was incorporated in 1969 as Family Savings Bank and in 1985 as BPI Family Bank. Petitioner, on the other hand, was incorporated as GSIS Family — Thrift Bank only in 2002, or at least seventeen (17) years after respondent started using its name. Following the precedent in the IRCP case, we rule that respondent has the prior right over the use of the corporate name.

3. **ID.; ID.; ID.; THE OVERRIDING CONSIDERATION IN DETERMINING WHETHER A PERSON, USING ORDINARY CARE AND DISCRIMINATION, MIGHT BE MISLED IS THE CIRCUMSTANCE THAT BOTH PETITIONER AND RESPONDENT ARE ENGAGED IN THE SAME BUSINESS OF BANKING.—** 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. Petitioner's corporate name is "GSIS Family Bank — A Thrift Bank" and respondent's corporate name is "BPI Family Bank." The only words that distinguish the two are "BPI," "GSIS," and "Thrift." The first two words are merely the acronyms of the proper names by which the two corporations identify themselves; and the third word simply describes the

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classification of the bank. The overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both petitioner and respondent are engaged in the same business of banking. "The likelihood of confusion is accentuated in cases where the goods or business of one corporation are the same or substantially the same to that of another corporation."

4. **ID.; SECURITIES AND EXCHANGE COMMISSION (SEC); HAS THE 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.—** The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of the SEC Reorganization Act, as amended. By express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations. 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. It has authority to de-register at all times, and under all circumstances corporate names which in its estimation are likely to generate confusion.

5. **ID.; ID.; THE SEC CAN COMPEL PETITIONER TO ABIDE BY ITS COMMITMENT TO CHANGE ITS CORPORATE NAME IN THE EVENT THAT ANOTHER PERSON, FIRM OR ENTITY HAS ACQUIRED A PRIOR RIGHT TO USE OF SAID NAME OR SIMILAR TO IT.—** The SEC correctly applied Section 18 of the Corporation Code, and Section 15 of SEC Memorandum Circular No. 14-2000. x x x The SEC, after finding merit in respondent's claims, can compel petitioner to abide by its commitment "to change its corporate name in the event that another person, firm or entity has acquired a prior right to use of said name or one similar to it." Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law. The BSP opinion invoked by petitioner even acknowledges that "the issue on whether a proposed name is identical or deceptively similar to that of any of existing corporation is matter within the official jurisdiction and competence of the SEC." Judicial notice may also be taken of the action of the IPO in approving respondent's registration

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of the trademark "BPI Family Bank" and its logo on October 17, 2008. The certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

6. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THE EXCEPTIONS TO THE GENERAL RULE THAT FORUM SHOPPING SHOULD BE RAISED IN THE EARLIEST OPPORTUNITY DO NOT OBTAIN IN CASE AT BAR.—We uphold the Court of Appeals' finding that the issue of forum shopping was belatedly raised by petitioner and, thus, cannot anymore be considered at the appellate stage of the proceedings. Petitioner raised the issue of forum shopping for the first time only on appeal. Petitioner argued that the complaints filed by respondent did not contain certifications against non-forum shopping, in violation of Section 5, Rule 7 of the Rules of Court. x x x In this case, the fact that respondent filed a case before the DTI was made known to petitioner long before the SEC rendered its decision. Yet, despite its knowledge, petitioner failed to question the alleged forum shopping before the SEC. The exceptions to the general rule that forum shopping should be raised in the earliest opportunity, as explained in the cited case of *Young v. Keng Seng*, do not obtain in this case.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Benedicto & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari* filed by GSIS Family Bank – Thrift Bank[1] assailing the Court of Appeals

[1] Petitioner "GSIS Family Bank – Thrift Bank" is sometimes referred to as "Comsavings Bank, Inc." as in SC Resolution dated December

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Decision[2] dated March 29, 2006 (Decision) and Resolution[3] dated October 23, 2006 which denied petitioner's petition for review of the Securities and Exchange Commission Decision dated February 22, 2005 (SEC *En Banc* Decision). The SEC *En Banc* Decision[4] prohibited petitioner from using the word "Family" as part of its corporate name and ordered petitioner to delete the word from its name.[5]

Facts

Petitioner was originally organized as Royal Savings Bank and started operations in 1971. Beginning 1983 and 1984, petitioner encountered liquidity problems. On July 9, 1984, it was placed under receivership and later temporarily closed by the Central Bank of the Philippines. Two (2) months after its closure, petitioner reopened and was renamed Comsavings Bank, Inc. under the management of the Commercial Bank of Manila.[6]

In 1987, the Government Service Insurance System (GSIS) acquired petitioner from the Commercial Bank of Manila.

06, 2006, *rollo*, p. 7; "GSIS Family Bank – A Thrift Bank (Formerly Comsavings Bank, Inc.)" as in SC Resolution dated February 05, 2007, *id.* at 117; "Comsavings Bank Inc. (Operating under the trade name GSIS Family Bank – A Thrift Bank)" as in Court of Appeals Decision dated March 29, 2006, and in SEC *En Banc* Decision dated February 22, 2005, *id.* at 38 and 89, respectively. For uniformity, we adopt the name "GSIS Family Bank – Thrift Bank" as used in the SC Resolutions dated October 17, 2007 and January 28, 2008, *id.* at 131 and 139, respectively.

[2] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring. *Rollo*, pp. 38-47.

[3] Resolution denying petitioner's Motion for Reconsideration of the Court of Appeals Decision dated March 29, 2006. *Id.* at 49.

[4] *Id.* at 89-90.

[5] Affirming the Decision of the SEC Company Registration and Monitoring Department (SEC CRMD) dated May 19, 2003, *id.* at 70, 89-90.

[6] Petition for Review on *Certiorari*, *id.* at 13.

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Petitioner's management and control was thus transferred to GSIS.[7] To improve its marketability to the public, especially to the members of the GSIS, petitioner sought Securities and Exchange Commission (SEC) approval to change its corporate name to "GSIS Family Bank, a Thrift Bank."[8] Petitioner likewise applied with the Department of Trade and Industry (DTI) and Bangko Sentral ng Pilpinas (BSP) for authority to use "GSIS Family Bank, a Thrift Bank" as its business name. The DTI and the BSP approved the applications.[9] Thus, petitioner operates under the corporate name "GSIS Family Bank – a Thrift Bank," pursuant to the DTI Certificate of Registration No. 741375 and the Monetary Board Circular approval.[10]

Respondent BPI Family Bank was a product of the merger between the Family Bank and Trust Company (FBTC) and the Bank of the Philippine Islands (BPI).[11] On June 27, 1969, the Gotianum family registered with the SEC the corporate name "Family First Savings Bank," which was amended to "Family Savings Bank," and then later to "Family Bank and Trust Company."[12] Since its incorporation, the bank has been commonly known as "Family Bank." In 1985, Family Bank merged with BPI, and the latter acquired all the rights, privileges, properties, and interests of Family Bank, including the right to use names, such as "Family First Savings Bank," "Family Bank," and "Family Bank and Trust Company." BPI Family Savings Bank was registered with the SEC as a wholly-owned subsidiary of BPI. BPI Family Savings Bank then registered with the Bureau of Domestic Trade the trade or business name "BPI Family Bank," and acquired a reputation and goodwill under the name.[13]

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[7] *Id.*

[8] Petition for Review, *id.* at 94.

[9] *Id.* at 95.

[10] *Id.* at 38.

[11] *Id.* at 39.

[12] *Id.* at 38-39.

[13] *Id.* at 39.

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Proceedings before the SEC

Eventually, it reached respondent's attention that petitioner is using or attempting to use the name "Family Bank." Thus, on March 8, 2002, respondent petitioned the SEC Company Registration and Monitoring Department (SEC CRMD) to disallow or prevent the registration of the name "GSIS Family Bank" or any other corporate name with the words "Family Bank" in it. Respondent claimed exclusive ownership to the name "Family Bank," having acquired the name since its purchase and merger with Family Bank and Trust Company way back 1985.[14] Respondent also alleged that through the years, it has been known as "BPI Family Bank" or simply "Family Bank" both locally and internationally. As such, it has acquired a reputation and goodwill under the name, not only with clients here and abroad, but also with correspondent and competitor banks, and the public in general.[15]

Respondent prayed the SEC CRMD to disallow or prevent the registration of the name "GSIS Family Bank" or any other corporate name with the words "Family Bank" should the same be presented for registration. Respondent likewise prayed the SEC CRMD to issue an order directing petitioner or any other corporation to change its corporate name if the names have already been registered with the SEC.[16]

The SEC CRMD was thus confronted with the issue of whether the names BPI Family Bank and GSIS Family Bank are confusingly similar as to require the amendment of the name of the latter corporation.

The SEC CRMD declared that upon the merger of FBTC with the BPI in 1985, the latter acquired the right to the use of the name of the absorbed corporation. Thus, BPI Family Bank has a prior right to the use of the name Family Bank in the banking industry, arising from its long and extensive

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[14] *Rollo*, p. 50.

[15] *Id.* at 51.

[16] *Id.*

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nationwide use, coupled with its registration with the Intellectual Property Office (IPO) of the name "Family Bank" as its trade name. Applying the rule of "priority in registration" based on the legal maxim first in time, first in right, the SEC CRMD concluded that BPI has the preferential right to the use of the name "Family Bank." More, GSIS and Comsavings Bank were then fully aware of the existence and use of the name "Family Bank" by FBTC prior to the latter's merger with BPI.[17]

The SEC CRMD also held that there exists a confusing similarity between the corporate names BPI Family Bank and GSIS Family Bank. It explained that although not identical, the corporate names are indisputably similar, as to cause confusion in the public mind, even with the exercise of reasonable care and observation, especially so since both corporations are engaged in the banking business.[18]

In a decision[19] dated May 19, 2003, the SEC CRMD said,

> **PREMISES CONSIDERED** respondent GSIS FAMILY BANK is hereby directed to refrain from using the word "Family" as part of its name and make good its commitment to change its name by deleting or dropping the subject word from its corporate name within [thirty (30) days] from the date of actual receipt hereof.[20]

Petitioner appealed[21] the decision to the SEC *En Banc*, which denied the appeal, and upheld the SEC CRMD in the SEC *En Banc* Decision.[22] Petitioner elevated the SEC *En Banc* Decision to the Court of Appeals, raising the following issues:

1. Whether the use by GSIS Family Bank of the words "Family Bank" is deceptively and confusingly similar to the name BPI Family Bank;

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[17] SEC Decision, *Rollo*, pp. 67-68.

[18] *Id.* at 68.

[19] *Rollo*, pp. 65-70.

[20] *Id.* at 70.

[21] *Id.* at 71-81.

[22] *Id.*at 90.

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2. Whether the use by Comsavings Bank of "GSIS Family Bank" as its business constitutes unfair competition;
3. Whether BPI Family Bank is guilty of forum shopping;
4. Whether the approval of the DTI and the BSP of petitioner's application to use the name GSIS Family Bank constitutes its authority to the lawful and valid use of such trade name or trade mark;
5. Whether the application of respondent BPI Family Bank for the exclusive use of the name "Family Bank," a generic name, though not yet approved by IPO of the Bureau of Patents, has barred the GSIS Family Bank from using such trade mark or name.[23]

Court of Appeals Ruling

The Court of Appeals ruled that the approvals by the BSP and by the DTI of petitioner's application to use the name "GSIS Family Bank" do not constitute authority for its lawful and valid use. It said that the SEC has absolute jurisdiction, supervision and control over all corporations.[24] The Court of Appeals held that respondent was entitled to the exclusive use of the corporate name because of its prior adoption of the name "Family Bank" since 1969.[25] There is confusing similarity in the corporate names because "[c]onfusion as to the possible association with GSIS might arise if we were to allow Comsavings Bank to add its parent company's acronym, 'GSIS' to 'Family Bank.' This is true especially considering both companies belong to the banking industry. Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur."[26] The Court of Appeals also ruled out forum shopping because not all the requirements of *litis pendentia* are present.[27]

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[23] *Id.* at 41-42.

[24] *Id.* at 42-43.

[25] *Id.* at 45-46.

[26] *Rollo,* p. 46.

[27] *Id.* at 43-44.

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The dispositive portion of the decision read,

WHEREFORE, the instant petition for review is hereby **DISMISSED** for lack of merit.[28]

After its Motion for Reconsideration was denied,[29] petitioner brought the decision to this Court *via* a Petition for Review on *Certiorari*.[30]

Issues in the Petition

Petitioner raised the following issues in its petition:

I. The Court of Appeals gravely erred in affirming the SEC Resolution finding the word "Family" not generic despite its unregistered status with the IPO of the Bureau of Patents and the use by GSIS-Family Bank in its corporate name of the words "[F]amily [B]ank" as deceptive and [confusingly similar] to the name BPI Family Bank;[31]

II. The Court of Appeals gravely erred when it ruled that the respondent is not guilty of forum shopping despite the filing of three (3) similar complaints before the DTI and BSP and with the SEC without the requisite certification of non-forum shopping attached thereto;[32]

III. The Court of Appeals gravely erred when it completely disregarded the opinion of the Banko Sentral ng Pilipinas that the use by the herein petitioner of the trade name GSIS Family Bank – Thrift Bank is not similar or does not deceive or likely cause any deception to the public.[33]

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[28] *Id.* at 47.

[29] Resolution dated October 23, 2006, *id.* at 49.

[30] *Id.* at 9-36.

[31] *Id.* at 17.

[32] *Id.* at 25.

[33] *Id.* at 30.

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Court's Ruling

We uphold the decision of the Court of Appeals.

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 *Philips Export B.V. v. Court of Appeals,*[34] this Court ruled that to fall within the prohibition of the law on the right to the exclusive use of a corporate name, 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) deceptive 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.[35]

These two requisites are present in this case. On the first requisite of a prior right, *Industrial Refractories Corporation of the Philippines v. Court of Appeals* (IRCP case)[36] is instructive. In that case, Refractories Corporation of the Philippines (RCP) filed before the SEC a petition to compel Industrial Refractories Corporation of the Philippines (IRCP)

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[34] G.R. No. 96161, February 21, 1992, 206 SCRA 457.

[35] *Id*. at 463.

[36] G.R. No. 122174, October 03, 2002, 390 SCRA 252.

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to change its corporate name on the ground that its corporate name is confusingly similar with that of RCP's such that the public may be confused into believing that they are one and the same corporation. The SEC and the Court of Appeals found for petitioner, and ordered IRCP to delete or drop from its corporate name the word "Refractories." Upon appeal of *IRCP*, this Court upheld the decision of the CA.

Applying the priority of adoption rule to determine prior right, this Court said that RCP has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant. In arriving at this conclusion, the Court considered that RCP was incorporated on October 13, 1976 and since then continuously used the corporate name "Refractories Corp. of the Philippines." Meanwhile, IRCP only started using its corporate name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985.[37]

In this case, respondent was incorporated in 1969 as Family Savings Bank and in 1985 as BPI Family Bank. Petitioner, on the other hand, was incorporated as GSIS Family – Thrift Bank only in 2002,[38] or at least seventeen (17) years after respondent started using its name. Following the precedent in the IRCP case, we rule that respondent has the prior right over the use of the corporate name.

The second requisite in the *Philips Export* case likewise obtains on two points: the proposed name is (a) identical or (b) deceptive or confusingly similar to that of any existing corporation or to any other name already protected by law.

On the first point (a), the words "Family Bank" present in both petitioner and respondent's corporate name satisfy the requirement that there be identical names in the existing corporate name and the proposed one. Respondent cannot justify its claim

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[37] *Id.* at 260.

[38] *Rollo,* p. 45.

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under Section 3 of the Revised Guidelines in the Approval of Corporate and Partnership Names,[39] to wit:

> 3. The name shall not be identical, misleading or confusingly similar to one already registered by another corporation or partnership with the Commission or a sole proprietorship registered with the Department of Trade and Industry.
>
> If the proposed name is similar to the name of a registered firm, the proposed name must contain at least one distinctive word different from the name of the company already registered.

Section 3 states that if there be identical, misleading or confusingly similar name to one already registered by another corporation or partnership with the SEC, the proposed name must contain at least one distinctive word different from the name of the company already registered. To show contrast with respondent's corporate name, petitioner used the words "GSIS" and "thrift." But these are not sufficiently distinct words that differentiate petitioner's corporate name from respondent's. While "GSIS" is merely an acronym of the proper name by which petitioner is identified, the word "thrift" is simply a classification of the type of bank that petitioner is. Even if the classification of the bank as "thrift" is appended to petitioner's proposed corporate name, it will not make the said corporate name distinct from respondent's because the latter is likewise engaged in the banking business.

This Court used the same analysis in *Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. v. Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan*.[40] In that case, *Iglesia ng Dios Kay Cristo Jesus* filed a case before the SEC to compel *Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus* to change its corporate name, and to prevent it from using the same or similar name on the ground that the same causes confusion among their members as well as the public. *Ang mga Kaanib*

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[39] SEC Memorandum Circular No. 14-2000.

[40] G.R. No. 137592, December 12, 2001, 372 SCRA 171.

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sa Iglesia ng Dios Kay Kristo Hesus claimed that it complied with SEC Memorandum Circular No. 14-2000 by adding not only two, but eight words to their registered name, to wit: "*Ang Mga Kaanib*" and "*Sa Bansang Pilipinas*, *Inc*.," which effectively distinguished it from *Iglesia ng Dios Kay Cristo Jesus*. This Court rejected the argument, thus:

> The additional words "*Ang Mga Kaanib*" and "*Sa Bansang Pilipinas, Inc.*" in petitioner's name are, as correctly observed by the SEC, merely descriptive of and also referring to the members, or *kaanib*, of respondent who are likewise residing in the Philippines. These words can hardly serve as an effective differentiating medium necessary to avoid confusion or difficulty in distinguishing petitioner from respondent. This is especially so, since both petitioner and respondent corporations are using the same acronym – H.S.K.; not to mention the fact that both are espousing religious beliefs and operating in the same place. xxx[41]

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.[42] 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.[43] And even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur.[44]

Petitioner's corporate name is "GSIS Family Bank—A Thrift Bank" and respondent's corporate name is "BPI Family Bank." The only words that distinguish the two are "BPI," "GSIS," and "Thrift." The first two words are merely the acronyms of the proper names by which the two corporations identify themselves; and the third word simply describes the classification

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[41] *Id.* at 178.

[42] *Rollo*, p. 68.

[43] *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, *supra* note 36 at 260.

[44] *Id.* at 261.

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of the bank. The overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both petitioner and respondent are engaged in the same business of banking. "The likelihood of confusion is accentuated in cases where the goods or business of one corporation are the same or substantially the same to that of another corporation."[45]

Respondent alleged that upon seeing a Comsavings Bank branch with the signage "GSIS Family Bank" displayed at its premises, some of the respondent's officers and their clients began asking questions. These include whether GSIS has acquired Family Bank; whether there is a joint arrangement between GSIS and Family Bank; whether there is a joint arrangement between BPI and GSIS regarding Family Bank; whether Comsavings Bank has acquired Family Bank; and whether there is there an arrangement among Comsavings Bank, GSIS, BPI, and Family Bank regarding BPI Family Bank and GSIS Family Bank.[46] The SEC made a finding that "[i]t is not a remote possibility that the public may entertain the idea that a relationship or arrangement indeed exists between BPI and GSIS due to the use of the term 'Family Bank' in their corporate names."[47]

Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, more so if the same has been upheld by the appellate court, as in this case.[48]

Petitioner cannot argue that the word "family" is a generic or descriptive name, which cannot be appropriated exclusively

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[45] RUBEN E. AGPALO, *The Law on Trademark, Infringement and Unfair Competition*, 1st ed. 2000, 111.

[46] *Rollo*, pp. 56-57.

[47] *Id.* at 68.

[48] *Nautica Canning Corporation v. Yumul*, G.R. No. 164588, October 19, 2005, 473 SCRA 415, 423-424.

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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.[49]

Under the facts of this case, the word "family" cannot be separated from the word "bank."[50] 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. They are original and unexpected in relation to the products they endorse, thus, becoming themselves distinctive."[51] 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."[52]

In *Ang v. Teodoro*,[53] this Court ruled that the words "Ang Tibay" is not a descriptive term within the meaning of the

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[49] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.,* G.R. No. 143993, August 18, 2004, 437 SCRA 10, 26.

[50] *Id.*

[51] EDUARDO C. ESCAÑO, *Trademarks in the Philippine: A Legal Guide*, 2003, 366, citing S. ELIAS, *Patent, Copyright and Trademark*, 2nd ed. 1997, 335.

[52] *Id.* at 383, citing II J THOMAS MCCARTHY, *McCarthy on Trademarks and Unfair Competition*, 11:62, 4th ed. 2001, 11-121.

[53] 74 Phil. 50 (1942). Citations omitted.

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Trademark Law but rather a fanciful or coined phrase.[54] In so ruling, this Court considered the etymology and meaning of the Tagalog words, "Ang Tibay" to determine whether they relate to the quality or description of the merchandise to which respondent therein applied them as trademark, thus:

> We find it necessary to go into the etymology and meaning of the Tagalog words "Ang Tibay" to determine whether they are a descriptive term, *i.e*., whether they relate to the quality or description of the merchandise to which respondent has applied them as a trade-mark. The word "ang" is a definite article meaning "the" in English. It is also used as an adverb, a contraction of the word "anong" (what or how). For instance, instead of saying, "Anong ganda!" ("How beautiful!"), we ordinarily say, "Ang ganda!" *Tibay* is a root word from which are derived the verb *magpatibay* (to strengthen); the nouns *pagkamatibay* (strength, durability), *katibayan* (proof, support, strength), *katibaytibayan* (superior strength); and the adjectives *matibay* (strong, durable, lasting), *napakatibay* (very strong), *kasintibay* or *magkasintibay* (as strong as, or of equal strength). The phrase "Ang Tibay" is an exclamation denoting admiration of strength or durability. For instance, one who tries hard but fails to break an object exclaims, "Ang tibay!" ("How strong!") It may also be used in a sentence thus, "Ang tibay ng sapatos mo!" ("How durable your shoes are!") The phrase "ang tibay" is never used adjectively to define or describe an object. One does not say, "ang tibay sapatos" or "sapatos ang tibay" to mean "durable shoes," but "matibay na sapatos" or "sapatos na matibay."
>
> From all of this we deduce that "Ang Tibay" is not a descriptive term within the meaning of the Trade-Mark Law but rather a fanciful or coined phrase which may properly and legally be appropriated as a trade-mark or trade-name. xxx[55] (Underscoring supplied).

The word "family" is defined as "a group consisting of parents and children living together in a household" or "a group of people related to one another by blood or marriage."[56] Bank, on the other hand, is defined as "a financial establishment that invests

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[54] See also, *McDonald's Corporation v. L.C. Big Mak Burger, Inc., supra*.

[55] *Id.* at 52.

[56] THE NEW OXFORD AMERICAN DICTIONARY, 2nd ed., 2005, 607.

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money deposited by customers, pays it out when requested, makes loans at interest, and exchanges currency."[57] By definition, there can be no expected relation between the word "family" and the banking business of respondent. Rather, the words suggest that respondent's bank is where family savings should be deposited. More, as in the *Ang* case, the phrase "family bank" cannot be used to define an object.

Petitioner's argument that the opinion of the BSP and the certificate of registration granted to it by the DTI constitute authority for it to use "GSIS Family Bank" as corporate name is also untenable.

The enforcement of the protection accorded by Section 18 of the Corporation Code to corporate names is lodged exclusively in the SEC. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of the SEC Reorganization Act,[58] as amended.[59] By express mandate, the SEC has absolute jurisdiction, supervision and control over all corporations.[60] 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. It has authority to de-register at all times, and under all circumstances corporate names which in its estimation are likely to generate confusion.[61]

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[57] *Id.* at 127.

[58] Presidential Decree (PD) No. 902-A (1976).

[59] *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, *supra* note 36 at 258.

[60] Section 3, PD 902-A. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of thegovernment, civil or military.

[61] *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, *supra* at 259 citing *Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. v. Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan*, *supra* note 40.

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The SEC[62] correctly applied Section 18 of the Corporation Code, and Section 15 of SEC Memorandum Circular No. 14-2000, pertinent portions of which provide:

> In implementing Section 18 of the Corporation Code of the Philippines (BP 69), the following revised guidelines in the approval of corporate and partnership names are hereby adopted for the information and guidance of all concerned:
>
> xxx x x x xxx
>
> 15. Registrant corporations or partnership shall submit a letter undertaking to change their corporate or partnership name in case another person or firm has acquired a prior right to the use of the said firm name or the same is deceptively or confusingly similar to one already registered unless this undertaking is already included as one of the provisions of the articles of incorporation or partnership of the registrant.

The SEC, after finding merit in respondent's claims, can compel petitioner to abide by its commitment "to change its corporate name in the event that another person, firm or entity has acquired a prior right to use of said name or one similar to it."[63]

Clearly, the only determination relevant to this case is that one made by the SEC in the exercise of its express mandate under the law. The BSP opinion invoked by petitioner even acknowledges that "the issue on whether a proposed name is identical or deceptively similar to that of any of existing corporation is matter within the official jurisdiction and competence of the SEC."[64]

Judicial notice[65] may also be taken of the action of the IPO in approving respondent's registration of the trademark "BPI

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[62] Referring to both the SEC CRMD and the SEC *En Banc*.

[63] *Rollo*, p. 69.

[64] *Id.* at 115.

[65] The IPO is subject to the supervision of the DTI (Republic Act No. 8293 [1997], The Intellectual Property Code of the Philippines, Section 7), which belongs to the executive department of the government.

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Family Bank" and its logo on October 17, 2008. The certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.[66]

Finally, we uphold the Court of Appeals' finding that the issue of forum shopping was belatedly raised by petitioner and, thus, cannot anymore be considered at the appellate stage of the proceedings. Petitioner raised the issue of forum shopping for the first time only on appeal.[67] Petitioner argued that the complaints filed by respondent did not contain certifications against non-forum shopping, in violation of Section 5, Rule 7 of the Rules of Court.[68]

Official acts of the executive department can be taken judicial notice of under the Rule 129 of the Rules of Court, to wit:

> Section 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[66] Republic Act No. 8293 (1997), Section 138.

[67] Petition for Review, *rollo*, p.104.

[68] Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

> (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;
>
> (b) if there is such other pending action or claim, a complete statement of the present status thereof; and

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In *S.C. Megaworld Construction and Development Corporation vs. Parada*,[69] this Court said that objections relating to non-compliance with the verification and certification of non-forum shopping should be raised in the proceedings below, and not for the first time on appeal. In that case, S.C. Megaworld argued that the complaint for collection of sum of money should have been dismissed outright by the trial court on account of an invalid non-forum shopping certification. It alleged that the Special Power of Attorney granted to Parada did not specifically include an authority for the latter to sign the verification and certification of non-forum shopping, thus rendering the complaint defective for violation of Sections 4 and 5 of Rule 7 of the Rules of Court. On motion for reconsideration of the decision of the Court of Appeals, petitioner raised for the first time, the issue of forum shopping. The Court ruled against S.C. Megaworld, thus:

> It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court**, administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*.[70]

In this case, the fact that respondent filed a case before the DTI was made known to petitioner[71] long before the SEC

(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. xxx

[69] G.R. No. 183804, September 11, 2013, 705 SCRA 584.

[70] *Id.* at 594, citations omitted. Emphasis in the original.

[71] Appellee's Reply Memorandum, *rollo*, p. 85.

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rendered its decision. Yet, despite its knowledge, petitioner failed to question the alleged forum shopping before the SEC. The exceptions to the general rule that forum shopping should be raised in the earliest opportunity, as explained in the cited case of *Young v. Keng Seng,*[72] do not obtain in this case.

WHEREFORE, the petition is **DENIED.** The decision of the Court of Appeals dated March 29, 2006 is hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 178317. September 23, 2015]

SPOUSES RICARDO and ELENA C. GOLEZ, *petitioners, vs.* **MELITON NEMEÑO,**[1] *respondent.*

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[72] Cited by the Court of Appeals in its Decision. G.R. No. 143464, March 5, 2003, 398 SCRA 629. As provided in this case –

> In general, violation of the rule on forum shopping should be raised at the earliest opportunity in a motion to dismiss or a similar pleading. Invoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action as an exception only if the violation arises from or will result in (1) the loss of jurisdiction over the subject matter, (2) the *pendency* of another action between the same parties for the same cause, (3) the barring of the action by prior judgement, or (4) the crossing of the Statute of Limitations.

[*] Designated as Acting Member in view of the leave of absence of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[1] Also referred to as Meliton Nemeño, Sr., Meliton Nemeno and Meliton Nemenio in some parts of the records.