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party against whom it is directed, giving such party the benefit of all favorable inferences.[33]

WHEREFORE, the petition is *DENIED* for lack of merit. The decision of the Court of Appeals is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Acting C.J., (Chairman), Quisumbing, and *Callejo, Sr., JJ.,* concur.

Mendoza, J., on official leave.

SECOND DIVISION

[G.R. No. 122174. October 3, 2002]

INDUSTRIAL REFRACTORIES CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION and REFRACTORIES CORPORATION OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

Respondent Refractories Corporation of the Philippines filed a petition before the respondent Securities and Exchange Commission (SEC) asking the latter to compel petitioner Industrial Refractories Corporation of the Philippines to change its corporate name on the ground that it was confusingly similar with that of petitioner's, such that the public may be confused

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[33] *Supra*, note 30.

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or deceived into believing that they are one and the same corporation. The SEC ruled in favor of respondent corporation and ordered petitioner corporation to delete from its corporate name the word "Refractories." Hence, petitioner corporation brought the matter before the Court of Appeals on ground of lack of jurisdiction. The Court of Appeals, however, upheld the jurisdiction of the SEC and ruled that the corporate names of petitioner corporation and respondent corporation were confusingly or deceptively similar, and that respondent corporation had established its prior right to use the word "Refractories" as its corporate name. Hence, this petition.

In denying the petition, the Supreme Court held that the present case falls within the ambit of the SEC's regulatory powers. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of P.D. 902-A, as amended. By express mandate, it has absolute jurisdiction, supervision and control over all corporations. It also exercises regulatory and administrative powers to implement and enforce the Corporation Code, one of which is the provision on the use of corporate name. It 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, and it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion.

The Court further held that the two corporate names were patently similar that even with reasonable care and observation, confusion might arise. The Court found that both corporate names contain the identical words "Refractories," "Corporation" and "Philippines"; both cater to the same clientele, *i.e.* the steel industry; and, both have similar product packaging, as found by the SEC. Hence, the confusion is probable or likely to occur.

SYLLABUS

1.COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; FINDINGS OF FACT THEREOF, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, IS FINAL.— If reckoned from the dates supplied by petitioner, then the petition was timely filed. On the other hand, if reckoned from the dates provided by respondent RCP, then it was filed way

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beyond the reglementary period. On this score, we agree with the appellate court's finding that petitioner failed to rebut respondent RCP's allegations of material dates of receipt and filing. In addition, the certifications were executed by the SEC officials based on their official records which enjoy the presumption of regularity. As such, these are *prima facie* evidence of the facts stated therein. And based on such dates, there is no question that the petition was filed with the Court of Appeals beyond the fifteen (15) day period. On this ground alone, the instant petition should be denied as the SEC *En Banc*'s decision had already attained finality and the SEC's findings of fact, when supported by substantial evidence, is final.

2. **ID.; ID.; JURISDICTION; SEC HAS AUTHORITY TO DE-REGISTER AT ALL TIMES AND UNDER ALL CIRCUMSTANCES CORPORATE NAMES WHICH IN ITS ESTIMATION ARE LIKELY TO GENERATE CONFUSION.**— Petitioner's argument on the SEC's jurisdiction over the case is utterly myopic. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of P.D. 902-A, as amended. By express mandate, it has absolute jurisdiction, supervision and control over all corporations. It also exercises regulatory and administrative powers to implement and enforce the Corporation Code, one of which is *Section 18*, which provides: "SEC. 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." It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public, and it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion. Clearly therefore, the present case falls within the ambit of the SEC's regulatory powers.

3. **ID.; PRIVATE CORPORATION ; USE OF CORPORATE NAME; REQUIREMENTS.**— Likewise untenable is

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petitioner's argument that there is no confusing or deceptive similarity between petitioner and respondent RCP's corporate names. *Section 18 of the Corporation Code* expressly prohibits the use of a corporate name which is "*identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws.*" The policy behind the foregoing prohibition is to avoid fraud upon the public that will have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporation. Pursuant thereto, the Revised Guidelines in the Approval of Corporate and Partnership Names specifically requires that: (1) a corporate name shall not be identical, misleading or confusingly similar to one already registered by another corporation with the Commission; and (2) 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.

4. ID.; ID.; ID.; PROHIBITION; REQUISITES.— As held in *Philips Export B.V. vs. Court of Appeals*, to fall within the prohibition of the law, two requisites must be proven, to wit: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical, or (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.

5. ID.; ID.; ID.; ID.; ID.; PRIORITY OF ADOPTION; RULE; CASE AT BAR.— As regards 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.* In this case, respondent RCP was incorporated on October 13, 1976 and since then has been using the corporate name "Refractories Corp. of the Philippines." Meanwhile, petitioner was incorporated on August 23, 1979 originally under the name "Synclaire Manufacturing Corporation." It only started using the name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985, or nine (9) years after respondent RCP started using its name. Thus, being the

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prior registrant, respondent RCP has acquired the right to use the word "Refractories" as part of its corporate name.

6. **ID.; ID.; ID.; ID.; ID.; EXISTENCE OF CONFUSING SIMILARITY IN CORPORATE NAMES; TEST; CASE AT BAR.**— Anent the second requisite, in determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination and the Court must look to the record as well as the names themselves. Petitioner's corporate name is "Industrial Refractories Corp. of the Phils.," while respondent's is "Refractories Corp. of the Phils." Obviously, both names contain the identical words "Refractories," "Corporation" and "Philippines." The only word that distinguishes petitioner from respondent RCP is the word "Industrial" which merely identifies a corporation's general field of activities or operations. We need not linger on these two corporate names to conclude that they are patently similar that even with reasonable care and observation, confusion might arise. It must be noted that both cater to the same clientele, *i.e.*, the steel industry. In fact, the SEC found that there were instances when different steel companies were actually confused between the two, especially since they also have similar product packaging. Such findings are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that it had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated. And even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur.

7. **ID.; ID.; ID.; ID.; ID.; PETITIONER'S APPROPRIATION OF RESPONDENTS' CORPORATE NAME NOT JUSTIFIED UNDER THE GENERIC WORD RULE; REASON.**— While the word "refractories" is a generic term, its usage is not widespread and is limited merely to the industry/trade in which it is used, and its continuous use by respondent RCP for a considerable period has made the term so closely identified with it. Moreover, as held in the case of *Ang Kaanib sa Iglesia ng Dios kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. vs. Iglesia ng Dios kay Cristo Jesus, Haligi at Suhay ng Katotohanan,* petitioner's appropriation of respondent's

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corporate name cannot find justification under the generic word rule. A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.

8. CIVIL LAW; DAMAGES; AWARD OF ATTORNEY'S FEES; WHEN ALLOWED.— We find the award of P50,000.00 as attorney's fees to be fair and reasonable. *Article 2208 of the Civil Code* allows the award of such fees when its claimant is compelled to litigate with third persons or to incur expenses to protect its just and valid claim. In this case, despite its undertaking to change its corporate name in case another firm has acquired a prior right to use such name, it refused to do so, thus compelling respondent to undergo litigation and incur expenses to protect its corporate name.

APPEARANCES OF COUNSEL

Augusto Gatmaytan for petitioner.
Roxas Delos Reyes Laurel and Rosario for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Filed before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 35056, denying due course and dismissing the petition filed by Industrial Refractories Corp. of the Philippines (IRCP).

Respondent Refractories Corporation of the Philippines (RCP) is a corporation duly organized on October 13, 1976 for the purpose of engaging in the business of manufacturing, producing, selling, exporting and otherwise dealing in any and all refractory bricks, its by-products and derivatives. On June 22, 1977, it registered its corporate and business name with the Bureau of Domestic Trade.

Petitioner IRCP on the other hand, was incorporated on August 23, 1979 originally under the name "Synclaire Manufacturing Corporation." It amended its Articles of Incorporation on August

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23, 1985 to change its corporate name to "Industrial Refractories Corp. of the Philippines." It is engaged in the business of manufacturing all kinds of ceramics and other products, except paints and zincs.

Both companies are the only local suppliers of monolithic gunning mix.[1]

Discovering that petitioner was using such corporate name, respondent RCP filed on April 14, 1988 with the Securities and Exchange Commission (SEC) a petition to compel petitioner to change its corporate name on the ground that its corporate name is confusingly similar with that of petitioner's such that the public may be confused or deceived into believing that they are one and the same corporation.[2]

The SEC decided in favor of respondent RCP and rendered judgment on July 23, 1993 with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondent declaring the latter's corporate name 'Industrial Refractories Corporation of the Philippines' as deceptively and confusingly similar to that of petitioner's corporate name 'Refractories Corporation of the Philippines.' Accordingly, respondent is hereby directed to amend its Articles of Incorporation by deleting the name 'Refractories Corporation of the Philippines' in its corporate name within thirty (30) days from finality of this Decision. Likewise, respondent is hereby ordered to pay the petitioner the sum of ₱50,000.00 as attorney's fees."[3]

Petitioner appealed to the SEC *En Banc*, arguing that it does not have any jurisdiction over the case, and that respondent RCP has no right to the exclusive use of its corporate name as it is composed of generic or common words.[4]

In its Decision dated July 23, 1993, the SEC *En Banc* modified the appealed decision in that petitioner was ordered

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[1] *Rollo*, p. 89.

[2] CA *rollo*, p. 23.

[3] *Ibid.*

[4] *Id.*, p. 26.

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to delete or drop from its corporate name only the word "Refractories."[5]

Petitioner IRCP elevated the decision of the SEC *En Banc* through a petition for review on *certiorari* to the Court of Appeals which then rendered the herein assailed decision. The appellate court upheld the jurisdiction of the SEC over the case and ruled that the corporate names of petitioner IRCP and respondent RCP are confusingly or deceptively similar, and that respondent RCP has established its prior right to use the word "Refractories" as its corporate name.[6] The appellate court also found that the petition was filed beyond the reglementary period.[7]

Hence, herein petition which we must deny.

Petitioner contends that the petition before the Court of Appeals was timely filed. It must be noted that at the time the SEC *En Banc* rendered its decision on May 10, 1994, the governing rule on appeals from quasi-judicial agencies like the SEC was ***Supreme Court Circular No. 1-91.*** As provided therein, the remedy should have been a petition for review filed before the Court of Appeals within fifteen (15) days from notice, raising questions of fact, of law, or mixed questions of fact and law.[8] A motion for reconsideration suspends the running of the period.[9]

In the case at bench, there is a discrepancy between the dates provided by petitioner and respondent. Petitioner alleges the following dates of receipt and filing:[10]

June 10, 1994	Receipt of SEC's Decision dated May 10, 1994
June 20, 1994	Filing of Motion for Reconsideration
September 1, 1994	Receipt of SEC's Order dated August 3, 1994 denying petitioner's motion for reconsideration

[5] *Id.*, p. 27.

[6] *Id.*, pp. 140-142.

[7] *Id.*, pp. 143-144.

[8] Supreme Court Circular No. 1-91, Sections 3, 4 and 5; *Western Institute of Technology, Inc. vs. Salas,* 278 SCRA 216, 227 [1997].

[9] *Id.*, Section 4.

[10] *Rollo*, pp. 10-11.

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September 2, 1994 Filing of Motion for extension of time
September 6, 1994 Filing of Petition

Respondent RCP, however, asserts that the foregoing dates are incorrect as the certifications issued by the SEC show that petitioner received the SEC's Decision dated May 10, 1994 on June 9, 1994, filed the motion for reconsideration *via* registered mail on June 25, 1994, and received the Order dated August 3, 1994 on August 15, 1994.[11] Thus, the petition was filed twenty-one (21) days beyond the reglementary period provided in Supreme Court Circular No. 1-91.[12]

If reckoned from the dates supplied by petitioner, then the petition was timely filed. On the other hand, if reckoned from the dates provided by respondent RCP, then it was filed way beyond the reglementary period. On this score, we agree with the appellate court's finding that petitioner failed to rebut respondent RCP's allegations of material dates of receipt and filing.[13] In addition, the certifications were executed by the SEC officials based on their official records[14] which enjoy the presumption of regularity.[15] As such, these are *prima facie* evidence of the facts stated therein.[16] And based on such dates, there is no question that the petition was filed with the Court of Appeals beyond the fifteen (15) day period. On this ground alone, the instant petition should be denied as the SEC *En Banc*'s decision had already attained finality and the SEC's findings of fact, when supported by substantial evidence, is final.[17]

Nevertheless, to set the matters at rest, we shall delve into the other issues posed by petitioner.

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[11] CA *rollo*, Annexes "1" to "2", pp. 128-130.

[12] *Rollo*, pp. 79-81.

[13] CA *rollo*, p. 144.

[14] *Id.*, p. 128.

[15] *People vs. Banzales*, 336 SCRA 64, 75 [2000].

[16] Revised Rules on Evidence, Rule 132, Section 23.

[17] Supreme Court Circular No. 1-91, Section 8.

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Petitioner's arguments, substantially, are as follows: (1) jurisdiction is vested with the regular courts as the present case is not one of the instances provided in P.D. 902-A; (2) respondent RCP is not entitled to use the generic name "refractories"; (3) there is no confusing similarity between their corporate names; and (4) there is no basis for the award of attorney's fees.[18]

Petitioner's argument on the SEC's jurisdiction over the case is utterly myopic. The jurisdiction of the SEC is not merely confined to the adjudicative functions provided in Section 5 of P.D. 902-A, as amended.[19] By express mandate, it has absolute jurisdiction, supervision and control over all corporations.[20] It also exercises regulatory and administrative powers to implement and enforce the Corporation Code,[21] one of which is *Section 18*, which provides:

"SEC. 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."

It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public, and it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion.[22]

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[18] *Rollo*, pp. 9-24.

[19] Now superseded by R.A. 8799, otherwise known as "The Securities Regulation Code," effective August 8, 2000.

[20] P.D. 902-A, Section 3.

[21] Corporation Code, Section 143.

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

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Clearly therefore, the present case falls within the ambit of the SEC's regulatory powers.[23]

Likewise untenable is petitioner's argument that there is no confusing or deceptive similarity between petitioner and respondent RCP's corporate names. ***Section 18 of the Corporation Code*** expressly prohibits the use of a corporate name which is "*identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws.*" The policy behind the foregoing prohibition is to avoid fraud upon the public that will have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporation.[24]

Pursuant thereto, the Revised Guidelines in the Approval of Corporate and Partnership Names[25] specifically requires that: (1) a corporate name shall not be identical, misleading or confusingly similar to one already registered by another corporation with the Commission;[26] and (2) 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.[27]

As held in ***Philips Export B.V. vs. Court of Appeals***,[28] to fall within the prohibition of the law, two requisites must be proven, to wit:

(1) that the complainant corporation acquired a prior right over the use of such corporate name;

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[23] *Universal Mills Corporation vs. Universal Textile Mills, Inc.*, 78 SCRA 62, 64 [1977].

[24] *Lyceum of the Philippines vs. Court of Appeals*, 219 SCRA 610, 615 [1993].

[25] SEC Memorandum Circular No. 14-00 [October 24, 2000].

[26] *Id.*, no. 3.

[27] *Ibid.*

[28] 206 SCRA 457, 463 [1992].

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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.

As regards 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.*[29] In this case, respondent RCP was incorporated on October 13, 1976 and since then has been using the corporate name "Refractories Corp. of the Philippines." Meanwhile, petitioner was incorporated on August 23, 1979 originally under the name "Synclaire Manufacturing Corporation." It only started using the name "Industrial Refractories Corp. of the Philippines" when it amended its Articles of Incorporation on August 23, 1985, or nine (9) years after respondent RCP started using its name. Thus, being the prior registrant, respondent RCP has acquired the right to use the word "Refractories" as part of its corporate name.

Anent the second requisite, in determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination and the Court must look to the record as well as the names themselves.[30] Petitioner's corporate name is "Industrial Refractories Corp. of the Phils.," while respondent's is "Refractories Corp. of the Phils." Obviously, both names contain the identical words "Refractories," "Corporation" and "Philippines." The only word that distinguishes petitioner from respondent RCP is the word "Industrial" which merely identifies a corporation's general field of activities or operations. We need not linger on these two corporate names to conclude that

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[29] *Ibid.*, citing 1 Thomson, p. 80 citing *Munn v. Americana Co.*, 82 N., Eq. 63, 88 Atl. 30; *San Francisco Oyster House v. Mihich*, 75 Wash, 274, 134 Pac. 921.

[30] *Id.*, p. 464, citing *Ohio Nat. Life Ins. Co. vs. Ohio Life Ins. Co.*, 210 NE 2d 298.

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they are patently similar that even with reasonable care and observation, confusion might arise.[31] It must be noted that both cater to the same clientele, *i.e.*, the steel industry. In fact, the SEC found that there were instances when different steel companies were actually confused between the two, especially since they also have similar product packaging.[32] Such findings are accorded not only great respect but even finality, and are binding upon this Court, unless it is shown that it had arbitrarily disregarded or misapprehended evidence before it to such an extent as to compel a contrary conclusion had such evidence been properly appreciated.[33] And even without such proof of actual confusion between the two corporate names, it suffices that confusion is probable or likely to occur.[34]

Refractory materials are described as follows:

"Refractories are structural materials used at high temperatures to [*sic*] industrial furnaces. They are supplied mainly in the form of brick of standard sizes and of special shapes. Refractories also include refractory cements, bonding mortars, plastic firebrick, castables, ramming mixtures, and other bulk materials such as dead-burned grain magneside, chrome or ground ganister and special clay."[35]

While the word "refractories" is a generic term, its usage is not widespread and is limited merely to the industry/trade in which it is used, and its continuous use by respondent RCP for a considerable period has made the term so closely identified with it.[36] Moreover, as held in the case of *Ang Kaanib sa Iglesia*

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[31] *Universal Mills Corporation vs. Universal Textile Mills, Inc.*, *supra*, p. 65.

[32] CA *rollo*, p. 27.

[33] *Batangas Laguna Tayabas Bus Co., Inc. vs. Bitanga*, G.R. No. 137934, August 10, 2001.

[34] *Philips Export B.V. vs. Court of Appeals*, *supra.*, p. 464, citing 6 Fletcher [Perm Ed], pp. 107-108..

[35] *Commission of Customs vs. Court of Tax Appeals*, 185 SCRA 277, 281 [1990], citing the Kent Handbook on Design and Production, 12th Edition.

[36] CA *rollo*, pp. 140-141.

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ng Dios kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. vs. Iglesia ng Dios kay Cristo Jesus, Haligi at Suhay ng Katotohanan, petitioner's appropriation of respondent's corporate name cannot find justification under the generic word rule. [37] A contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.[38]

Finally, we find the award of P50,000.00 as attorney's fees to be fair and reasonable. *Article 2208 of the Civil Code* allows the award of such fees when its claimant is compelled to litigate with third persons or to incur expenses to protect its just and valid claim. In this case, despite its undertaking to change its corporate name in case another firm has acquired a prior right to use such name,[39] it refused to do so, thus compelling respondent to undergo litigation and incur expenses to protect its corporate name.

WHEREFORE, the instant petition for review on *certiorari* is hereby ***DENIED*** for lack of merit.

Costs against petitioner.

SO ORDERED.

Bellosillo, Acting C.J., (Chairman), Quisumbing, and *Callejo, Sr., JJ.,* concur.

Mendoza, J., on official leave.

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[37] *Supra.*, Note No. 21.

[38] *Ibid.*

[39] CA *rollo*, p. 24.