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poor health, *there are no supervening events that warrant the Court's reconsideration*. What is more, the issue raised in G.R. No. 70242, can no longer be relitigated anew since said issue has already been resolved and finally laid to rest. "*Hoc quidem per quam durum est sed ita lex scripta est*."

I hold that the petition is "clearly and plainly barred by *res judicata*, and in such a manner as to leave no doubt or hesitation in the mind of my brethren." More importantly, petitioners have not convinced me that the herein case deserves to be reopened, by way of an exception to the well-entrenched doctrine of *res judicata*.

Res judicata, I submit, lies.

SECOND DIVISION

[G.R. No. 96161. February 21, 1992]

PHILIPS EXPORT B.V., PHILIPS ELECTRICAL LAMPS, INC. and PHILIPS INDUSTRIAL DEVELOPMENT, INC., *petitioners, vs.* **COURT OF APPEALS, SECURITIES & EXCHANGE COMMISSION and STANDARD PHILIPS CORPORATION,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; SECTION 18 THEREOF APPLICABLE ONLY WHEN CORPORATE NAMES ARE IDENTICAL. — Section 18 of the Corporation Code is applicable only when the corporate names in question are identical. In the instant case, there is no confusing similarity between Petitioners' and Private Respondent's corporate names

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as those of the Petitioners contain at least two words different from that of the Respondent.

2. ID.; CORPORATION; RIGHT TO USE ITS CORPORATE AND TRADE NAME, A PROPERTY RIGHT. — As early as *Western Equipment and Supply Co. v. Reyes*, 51 Phil. 115 (1927), the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion. It is regarded, to a certain extent, as a property right and one which cannot be impaired or defeated by subsequent appropriation by another corporation in the same field.

3. ID.; ID.; IMPORTANCE OF CORPORATE NAME. — A name is peculiarly important as necessary to the very existence of a corporation. Its name is one of its attributes, an element of its existence, and essential to its identity (6 Fletcher [Perm Ed], pp. 3-4). The general rule as to corporations is that each corporation must have a name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person (*Cincinnati Cooperage Co. vs. Bate*, 96 Ky 356, 26 SW 538; *Newport Mechanics Mfg. Co. vs. Starbird*, 10 NH 123); and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted.

4. ID.; ID.; CORPORATE NAME DISTINGUISHED FROM INDIVIDUAL'S NAME. — A corporation acquires its name by choice and need not select a name identical with or similar to one already appropriated by a senior corporation while an individual's name is thrust upon him (See *Standard Oil Co. of New Mexico, Inc. v. Standard Oil Co. of California*, 56 F 2d 973, 977). A corporation can no more use a corporate name in violation of the rights of others that an individual can use his name legally acquired so as to mislead the public and injure another.

5. ID.; ID.; ID.; STATUTORY PROHIBITION PROVIDED IN SEC. 18 OF CORPORATION CODE; REQUISITES. — Our own Corporation Code, in its Section 18, expressly provides that: "No corporate name may be allowed by the Securities

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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 law.* Where a change in the corporate name is approved, the commission shall issue an amended certificate of incorporation under the amended name." (Italics supplied) The statutory prohibition cannot be any clearer. To come within its scope, 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) *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.

6. ID.; ID.; ID.; RIGHT TO EXCLUSIVE USE OF CORPORATE NAME DETERMINED BY PRIORITY OF ADOPTION; APPLIED IN CASE AT BAR. — The right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption (1 Thompson, 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). In this regard, there is no doubt with respect to Petitioners' prior adoption of the name "PHILIPS" as part of its corporate name. Petitioners Philips Electrical and Philips Industrial were incorporated on 29 August 1956 and 25 May 1956, respectively, while Respondent Standard Philips was issued a Certificate of Registration on 19 April 1982, twenty-six (26) years later (*Rollo*, p.16). Petitioner PEBV has also used the trademark "PHILIPS" on electrical lamps of all types and their accessories since 30 September 1922, as evidenced by Certificate of Registration No. 1651.

7. ID.; ID.; ID.; TEST IN DETERMINING EXISTENCE OF CONFUSING SIMILARITY; PROOF OF ACTUAL CONFUSION, NOT NECESSARY. — 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. In so doing, the Court must look to the record as well as the names themselves (*Ohio Nat. Life Ins. Co. v. Ohio Life Ins. Co*., 210 NE 2d 298). It is settled, however, that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur (6 Fletcher

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[Perm Ed], pp. 107-108, enumerating a long line of cases).

8. ID.; ID.; ID.; INTENT OF SUBSEQUENT APPROPRIATOR OF NAME. — Petitioners pointed out that "[p]rivate respondent's choice of 'PHILIPS' as part of its corporate name [STANDARD PHILIPS CORPORATION] . . . tends to show said respondent's intention to ride on the popularity and established goodwill of said petitioner's business throughout the world." The subsequent appropriator of the name or one confusingly similar thereto usually seeks an unfair advantage, a free ride on another's goodwill.

9. ID.; ID.; ID.; RULE ON PROPOSED NAME. — True, under the Guidelines in the Approval of Corporate and Partnership Names formulated by the SEC, the proposed name "should not be similar to one already used by another corporation or partnership. If the proposed name contains a word already used as part of the firm name or style of a registered company, the proposed name must contain two other words different from the company already registered." It is then pointed out that Petitioners Philips Electrical and Philips Industrial have two words different from that of Private Respondent's name.

10. ID.; ID.; ID.; CORPORATION HAS EXCLUSIVE RIGHT TO THE USE OF ITS NAME WHICH MAY BE PROTECTED BY INJUNCTION; BASIS FOR SUCH PRINCIPLE. — A corporation has an exclusive right to the use of its name, which may be protected by injunction upon a principle similar to that upon which persons are protected in the use of trademarks and tradenames (18 C.J.S. 574). Such principle proceeds upon the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name (6 Fletcher [Perm Ed.], pp. 39-40, citing *Borden Ice Cream Co. v. Borden's Condensed Milk Co.*, 210 F 510).

APPEARANCES OF COUNSEL

Emeterio V. Soliven & Associates for petitioners.
Narciso A. Manantan for private respondent.

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D E C I S I O N

MELENCIO-HERRERA, *J.*:

Petitioners challenge the Decision of the Court of Appeals, dated 31 July 1990, in CA-GR Sp. No. 20067, upholding the Order of the Securities and Exchange Commission, dated 2 January 1990, in SEC-AC No. 202, dismissing petitioners' prayer for the cancellation or removal of the word "PHILIPS" for private respondent's corporate name.

Petitioner Philips Export B.V. (PEBV), a foreign corporation organized under the laws of the Netherlands, although not engaged in business here, is the registered owner of the trademarks PHILIPS and PHILIPS SHIELD EMBLEM under Certificate of Registration Nos. R-1641 and R-1674, respectively issued by the Philippine Patent Office (presently known as the Bureau of Patents, Trademarks and Technology Transfer). Petitioners Philips Electrical Lamps, Inc. (Philips Electrical, for brevity) and Philips Industrial Development, Inc. (Philips Industrial, for short), authorized users of the trademarks PHILIPS and PHILIPS SHIELD EMBLEM, were incorporated on 29 August 1956 and 25 may 1956, respectively. All petitioner corporations belong to the PHILIPS Group of Companies.

Respondent Standard Philips Corporation (Standard Philips), on the other hand, was issued a Certificate of Registration by respondent Commission on 19 May 1982.

On 24 September 1984, Petitioners filed a letter complaint with the Securities & Exchange Commission (SEC) asking for the cancellation of the word "PHILIPS" from Private Respondent's corporate name in view of the prior registration with the Bureau of Patents of the trademark "PHILIPS" and the logo "PHILIPS SHIELD EMBLEM" in the name of Petitioner PEBV, and the previous registration of Petitioners Philips Electrical and Philips Industrial with the SEC.

As a result of Private Respondent's refusal to amend its Articles of Incorporation, Petitioners filed with the SEC, on 6 February 1985, a Petition (SEC Case No. 2743), praying for the issuance

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of a Writ of Preliminary Injunction, alleging, among others, that Private Respondent's use of the word PHILIPS amounts to an infringement and clear violation of Petitioner's exclusive right to use the same considering that both parties engage in the same business.

In its Answer, dated 7 March 1985, Private Respondent countered that Petitioner PEBV has no legal capacity to sue; that its use of its corporate name is not at all similar to Petitioners' trademark PHILIPS when considered in its entirety; and that its products consisting of chain rollers, belts, bearings and cutting saw are grossly different from Petitioners' electrical products.

After conducting hearings with respect to the prayer for Injunction, the SEC Hearing Officer, on 27 September 1985, ruled against the issuance of such Writ.

On 30 January 1987, the same Hearing Officer dismissed the Petition for lack of merit. In so ruling, the latter declared that inasmuch as the SEC found no sufficient ground for the granting of injunctive relief on the basis of the testimonial and documentary evidence presented, it cannot order the removal or cancellation of the word "PHILIPS" from Private Respondent's corporate name on the basis of the same evidence adopted *in toto* during trial on the merits. Besides, Section 18 of the Corporation Code (infra) is applicable only when the corporate names in question are identical. Here, there is no confusing similarity between Petitioners' and Private Respondent's corporate names as those of the Petitioners contain at least two words different from that of the Respondent. Petitioners' Motion for Reconsideration was likewise denied on 17 June 1987.

On appeal, the SEC *en banc* affirmed the dismissal declaring that the corporate names of Petitioners and Private Respondent hardly breed confusion inasmuch as each contains at least two different words and, therefore, rules out any possibility of confusing one for the other.

On 30 January 1990, Petitioners sought an extension of time to file a Petition for Review on *Certiorari* before this Court,

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which Petition was later referred to the Court of Appeals in a Resolution dated 12 February 1990.

In deciding to dismiss the petition on 31 July 1990, the Court of Appeals[1] swept aside Petitioners' claim that following the ruling in *Converse Rubber Corporation v. Universal Converse Rubber Products, Inc., et al*, (G.R. No. L-27906, January 8, 1987, 147 SCRA 154), the word PHILIPS cannot be used as part of Private Respondent's corporate name as the same constitutes a dominant part of Petitioners' corporate names. In so holding, the Appellate Court observed that the *Converse* case is not four-square with the present case inasmuch as the contending parties in *Converse* are engaged in a similar business, that is, the manufacture of rubber shoes. Upholding the SEC, the Appellate Court concluded that "private respondent's products consisting of chain rollers, belts, bearings and cutting saw are unrelated and non-competing with petitioners' products *i.e.* electrical lamps such that consumers would not in any probability mistake one as the source or origin of the product of the other."

The Appellate Court denied Petitioners' Motion for Reconsideration on 20 November 1990, hence, this Petition which was given due course on 22 April 1991, after which the parties were required to submit their memoranda, the latest of which was received on 2 July 1991. In December 1991, the SEC was also required to elevate its records for the perusal of this Court, the same not having been apparently before respondent Court of Appeals.

We find basis for petitioners' plea.

As early as *Western Equipment and Supply Co. v. Reyes*, 51 Phil. 115 (1927), the Court declared that a corporation's right to use its corporate and trade name is a property right, a right *in rem*, which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal, against trespass or conversion. It is regarded, to a certain extent, as a property right and one which cannot be

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[1] Second Division, composed of Justice Jose A. R. Melo, Chairman, Justice Antonio M. Martinez, *Ponente*, and Justice Nicolas P. Lapeña, Jr., Member.

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impaired or defeated by subsequent appropriation by another corporation in the same field (*Red Line Transportation Co. vs. Rural Transit Co.*, September 6, 1934, 60 Phil 549).

A name is peculiarly important as necessary to the very existence of a corporation (*American Steel Foundries vs. Robertson*, 269 US 372, 70 L ed 317, 46 S Ct 160; *Lauman vs. Lebanon Valley R. Co.*, 30 Pa 42; *First National Bank vs. Huntington Distilling Co*, 40 W Va 530, 23 SE 792). Its name is one of its attributes, an element of its existence, and essential to its identity (6 Fletcher [Perm Ed], pp. 3-4). The general rule as to corporations is that each corporation must have name by which it is to sue and be sued and do all legal acts. The name of a corporation in this respect designates the corporation in the same manner as the name of an individual designates the person (*Cincinnati Cooperage Co. vs. Bate*, 96 Ky 356, 26 SW 538; *Newport Mechanics Mfg. Co. vs. Starbird*, 10 NH 123); and the right to use its corporate name is as much a part of the corporate franchise as any other privilege granted (*Federal Secur. Co. vs. Federal Secur. Corp.*, 129 Or 375, 276 P 1100, 66 ALR 934; *Paulino vs. Portuguese Beneficial Association*, 18 RI 165, 26 A 36).

A corporation acquires its name by choice and need not select a name identical with or similar to one already appropriated by a senior corporation while an individual's name is thrust upon him (See *Standard Oil Co. of New Mexico, Inc. v. Standard Oil Co. of California*, 56 F 2d 973, 977). A corporation can no more use a corporate name in violation of the rights of others than an individual can use his name legally acquired so as to mislead the public and injure another (*Armington vs. Palmer*, 21 RI 109, 42 A 308).

Our own Corporation Code, in its Section 18, expressly provides that:

"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 law.* Where a change in the corporate

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name is approved, the commission shall issue an amended certificate of incorporation under the amended name." (Italics supplied).

The statutory prohibition cannot be any clearer. To come within its scope, 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) *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.

The right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption (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). In this regard, there is no doubt with respect to Petitioners' prior adoption of the name "PHILIPS" as part of its corporate name. Petitioners Philips Electrical and Philips Industrial were incorporated on 29 August 1956 and 25 May 1956, respectively, while Respondent Standard Philips was issued a Certificate of Registration on 19 April 1982, twenty-six (26) years later (*Rollo*, p.16). Petitioner PEBV has also used the trademark "PHILIPS" on electrical lamps of all types and their accessories since 30 September 1922, as evidenced by Certificate of Registration No. 1651.

The second requisite no less exists in this case. 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. In so doing, the Court must look to the record as well as the names themselves (*Ohio Nat. Life Ins. Co. v. Ohio Life Ins. Co.*, 210 NE 2d 298). While the corporate names of Petitioners and Private Respondent are not identical, a reading of Petitioner's corporate names, to wit:

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PHILIPS EXPORT B.V., PHILIPS ELECTRICAL LAMPS, INC. and PHILIPS INDUSTRIAL DEVELOPMENT, INC., inevitably leads one to conclude that "PHILIPS" is, indeed, the dominant word in that all the companies affiliated or associated with the principal corporation, PEBV, are known in the Philippines and abroad as the PHILIPS Group of Companies.

Respondents maintain, however, that Petitioners did not present an iota of proof of actual confusion or deception of the public much less a single purchaser or their product who has been deceived or confused or showed any likelihood of confusion. It is settled, however, that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur (6 Fletcher [Perm Ed], pp. 107-108, enumerating a long line of cases).

It may be that Private Respondent's products also consist of chain rollers, belts, bearing and the like while petitioners deal principally with electrical products. It is significant to note, however, that even the Director of Patents had denied Private Respondent's application for registration of the trademarks "Standard Philips & Device" for chains, rollers, belts, bearings and cutting saw. That office held that PEBV "had shipped to its subsidiaries in the Philippines equipment, machines and their parts which fall under international class where 'chains, rollers, belts, bearings and cutting saw,' the goods in connection with which Respondent is seeking to register "STANDARD PHILIPS . . . also belong" (Inter Partes Case No. 2010, June 17, 1988, SEC *Rollo*).

Furthermore, the records show that among Private Respondent's primary purposes in its Articles of Incorporation (Annex D, Petition; p. 37, *Rollo*) are the following:

"To *buy, sell, barter, trade, manufacture, import, export or otherwise acquire, dispose of, and deal in and deal with any kind* of goods, wares, and merchandise such as but not limited to plastics, carbon products, office stationery and supplies, hardware parts, *electrical wiring devices, electrical component parts and/or complement of* industrial, agricultural or commercial machineries,

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constructive supplies, *electrical supplies* and other merchandise which are or may become articles of commerce except food, drugs, and cosmetics and to carry on such business as manufacturer, distributor, dealer, indentor, factor, manufacturer's representative capacity for domestic or foreign companies." (emphasis ours).

For its part, Philips Electrical also includes, among its primary purposes, the following:

"To develop, manufacture and deal in electrical products, including electronic, mechanical and other similar products . . . ." (p. 30, Record of SEC Case No. 2743)

Given Private Respondent's aforesaid underlined primary purpose, nothing could prevent it from dealing in the same line of business of electrical devices, products or supplies which fall under its primary purposes. Besides, there is showing that Private Respondent not only manufactured and sold ballasts for fluorescent lamps with their corporate name printed thereon but also advertised the same as, among others, Standard Philips (TSN, before the SEC, pp. 14, 17, 25, 26, 37-42, June 14, 1985; pp. 16-19, July 25, 1985). As aptly pointed out by Petitioners, "[p]rivate respondent's choice of 'PHILIPS' as part of its corporate name [STANDARD PHILIPS CORPORATION] . . . tends to show said respondent's intention to ride on the popularity and established goodwill of said petitioner's business throughout the world" (*Rollo*, p. 137). The subsequent appropriator of the name or one confusingly similar thereto usually seeks an unfair advantage, a free ride on another's goodwill (*American Gold Star Mothers, Inc. v. National Gold Star Mothers, Inc., et al,* 89 App DC 269, 191 F 2d 488).

In allowing Private Respondent the continued use of its corporate name, the SEC maintains that the corporate names of Petitioners PHILIPS ELECTRICAL LAMPS, INC. and PHILIPS INDUSTRIAL DEVELOPMENT, INC. contain at least two words different from that of the corporate name of respondent STANDARD PHILIPS CORPORATION, which words will readily identify Private Respondent from Petitioners and *vice-versa*.

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True, under the Guidelines in the Approval of Corporate and Partnership Names formulated by the SEC, the proposed name "should not be similar to one already used by another corporation or partnership. If the proposed name contains a word already used as part of the firm name or style of a registered company, *the proposed name must contain two other words different from the company already registered*" (Italics supplied). It is then pointed out that Petitioners Philips Electrical and Philips Industrial have two words different from that of Private Respondent's name.

What is lost sight of, however, is that PHILIPS is a trademark or trade name which was registered as far back as 1922. Petitioners, therefore, have the exclusive right to its use which must be free from any infringement by similarity. A corporation has an exclusive right to the use of its name, which may be protected by injunction upon a principle similar to that upon which persons are protected in the use of trademarks and tradenames (18 C.J.S. 574). Such principle proceeds upon the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name (6 Fletcher [Perm Ed], pp. 39-40, citing *Borden Ice Cream Co. v. Borden's Condensed Milk Co.*, 210 F 510). Notably, too, Private Respondents' name actually contains only a single word, that is, "STANDARD", different from that of Petitioners inasmuch as the inclusion of the term "Corporation" or "Corp." merely serves the purpose of distinguishing the corporation from partnerships and other business organizations.

The fact that there are other companies engaged in other lines of business using the word "PHILIPS" as part of their corporate names is no defense and does not warrant the use by Private Respondent of such word which constitutes an essential feature of Petitioners' corporate name previously adopted and registered and having acquired the status of a well-known mark in the

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Philippines and internationally, as well (Bureau of Patents Decision No. 88-35 [TM], June 17, 1988, SEC Records).

In support of its application for the registration of its Articles of Incorporation with the SEC, Private Respondent had submitted an undertaking "manifesting its willingness to change its corporate name in the event another person, firm or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it." Private Respondent must now be held to its undertaking.

"As a general rule, 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 nonbusiness or nonprofit organization if misleading and likely to injure it in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having the prior right, by a suit for injunction against the new corporation to prevent the use of the name (*American Gold Star Mothers, Inc. v. National Gold Star Mothers, Inc.* 89 App DC 269, 191 F 2d 488, 27 ALR 2d 948)."

WHEREFORE, the Decision of the Court of Appeals dated 31 July 1990, and its Resolution dated 20 November 1990, are SET ASIDE and a new one entered ENJOINING private respondent from using "PHILIPS" as a feature of its corporate name, and ORDERING the Securities and Exchange Commission to amend private respondent's Articles of Incorporation by deleting the word PHILIPS from the corporate name of private respondent.

No costs.

SO ORDERED.

Paras, Padilla, Regalado, and *Nocon, JJ.*, concur.