



ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the matter of:

UTMOSTPEAK CORPORATION
COMPANY REG NO. CS2020700700;

SEC-EIPD Case No. 2024-7657
For Revocation of Primary
Registration

B&B TRADING CENTER OPC
COMPANY REG NO. 2022040049263-39
X-----X

ORDER OF REVOCATION

UTMOSTPEAK CORPORATION (“UMP”), is a corporation which registered under Company Registration Number CS202070070 with initial registered principal office address located at 396 Purok 3 San Lorenzo, City of Tabaco, Albay, Region V, Philippines, 4511 and eventually changed to Unit 17 Sundrel Business Center, National Road, J.P. Rizal St., Brgy. Sala, Cabuyao City, 4025 Province of Laguna per amended Articles of Incorporation approved on 11 November 2022, having a primary purpose of:

“To engage in wholesale trading of goods and merchandises.

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts. (emphasis ours)”

and with the following incorporators, and Officers, member of the Board of Directors, and Stockholders per its 2023 General Information Sheet on file with this Commission:

Name	Incorporator?	Board?	Position
Joseph Dimasaka Sergio	Yes	Member	Treasurer
Serapion Dimasaka Sergio, Jr.	Yes	Chairman	N.A.
Ariel Ontolan Mutia	Yes	-	-

Eliezer Tesorero Tanael	Yes	Member	CEO
David Cal Ebuenga	Yes	Member	Corporate Secretary
Matias Casi Callos	Yes	Member	Associated Person
Jonathan Dimasaka Sergio	Yes	-	-
Kimberly Wapili Sergio	No	No	N.A.

On the other hand, **B&B¹ TRADING CENTER OPC (“B&B OPC”)²** was incorporated as a one-person corporation (OPC) by Serapion Dimasaka Sergio, Jr., the Chairman of UMP, (OPC) having the same principal office address as UMP at Unit 17 Sundrel Business Center, National Road, J.P. Rizal St., Brgy. Sala, Cabuyao City, Laguna, Region IV-A, 4025 with Serapion Dimasaka Sergio Jr. as its single stockholder/director/president, Enrico Tan De Vera, and Nazarene C. Listana as its Nominee and Alternate, respectively, and having a purpose of:

“Primary:

To engage in, conduct, and carry on the business of buying, selling, distributing, and marketing at wholesale, insofar as may be permitted by law, all kinds of goods, commodities, wares, and merchandise of every kind and description.;

Secondary:

To purchase, acquire, own, lease, sell and convey real properties, EXCEPT FINANCIAL LEASING.;

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts. (emphasis ours)”

Based on the investigation conducted, it was confirmed that UMP offered investments to the public for a minimum investment of Php5,000.00 with a daily interest of 1% or for a total of 20% per month excluding weekends. The collected monies are invested, allegedly, in foreign exchange despite the absence of the necessary secondary license. Hence, an SEC Advisory was issued on 30 March 2022.

Thus, on 12 April 2022 B&B OPC was incorporated and continued the operations of UMP, [the one responsible for operating Bear and Bulls Trading

¹ B&B stands for Bear and Bulls

² with Company Registration Number 2022040049263-39

Academy App (known as Bear and Bulls)] by offering unregistered investment contract denominated as the Go diamond On-line Program with the following features:

1. **Online/Offline Retail Profit** where member shall earn by availing/consuming the company's consumer goods;
2. **Fast Start Bonus** where a member shall earn 10% direct referral commission based on the package availed of by his/her recruits;
3. **Infinity Pass-Up Bonus** where an Upline who avails of the Diamond package shall earn an unlimited 1% income for the avilment of his/her downlines of any of the package except for diamond package, while 5% income shall be earned by such Upline whose downline avails Diamond Package up to the fifth (5th) level;
4. **Bronze Sales Commission** where an Upline who avails of the Bronze Package shall earn Php2,000.00 for every matching under his/her structure;
5. **Booster Sales Commission** where an Upline who avails of the Silver, Gold, Platinum, and Diamond Packages shall earn a pairing income equivalent to Php5,000.00, Php10,000.00, Php20,000.00, and Php30,000.00, respectively;
6. **Effortless Match Bonus** where an Upline who avails Silver, Gold, Platinum, and Diamond Packages shall earn Php2,000.00, Php4,000.00, Php8,000.00, and Php12,000.00, respectively, for every recruits of his/her downlines; and
7. **Residual Matching Bonus** where a member shall earn certain income for every pairing of the points for his/her direct recruits and the equivalent points of the products purchased.

Meanwhile, on 21 December 2022, Serapion D. Sergio, Jr. filed his Affidavit to File Petition to Lift Advisory against UMP anchoring his defense, in verbatim, that:

“xxx 3. That the UTMOSTPEAK CORPORATION management sincerely DENIED the alleged accusation that the corporation is enticing the public to invest their money in the company, which is considered an investment scheme, and we also DENIED that we are using as UMP-Trading/UMP Community, according to those claim to represent this entity is offering investments where the minimum investment of Php5,000.00 shall earn daily interest of 1% or for a total of 20% per month excluding weekends. The collected monies are invested, allegedly, in foreign exchange; xxx”

While on 25 January 2023, Messrs. David C. Ebuenga and Eliezer T. Tanael personally appeared before this department where they were directed to file an Amended Affidavit with supporting evidence to substantiate the allegations, claim and defense mentioned in the previously executed Affidavit of Serapion D. Sergio, Jr. However, to date, none has been submitted to this department.

On 1 August 2023, a SEC Advisory against B&B Trading Center OPC³ was issued informing the public that the said entity, though its officers **Serapion Dimasaka, Jr. a.k.a. Jhun Sergio** and **Cesar Ramirez** and some other individuals, are **NOT AUTHORIZED TO SOLICIT INVESTMENTS TO THE PUBLIC.**

On 8 August 2023, Enrico T. De Vera sent an email at the EIPD reporting that that he, along with Nazaren C. Listana, withdrew their nomination as B&B's Nominee and Alternate and were replaced by Mr. Eliezer T. Tanael and Mr. David C. Ebuenga since 28 November 2022. Mr. De Vera and Ms. Listana further claimed that they have no accountabilities, responsibilities and participation in the business operation of B&B Trading Center OPC.

A Show Cause Order dated 10 January 2024 was issued by the Department directing:

1. **UTMOSTPEAK CORPORATION;**
2. **B&B TRADING CENTER OPC;**
3. **JOSEPH DIMASAKA SERGIO;**
4. **SERAPION DIMASAKA SERGIO, JR.;**
5. **ELIEZER TESORERO TANAEL;**
6. **DAVID CAL EBUENGA;**
7. **MATIAS CASI CALLOS;**
8. **ARIEL ONTOLAN MUTIA;**
9. **JONATHAN DIMASAKA SERGIO;**
10. **KIMBERLY WAPILI SERGIO;**
11. **ENRICO TAN DE VERA;** and
12. **NAZARENE C. LISTANA;**

to show cause in writing within five (5) days from receipt as to why its Certificate of Incorporation should not be revoked pursuant to Section 6 (i) (2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and why no administrative sanctions should be imposed against it as well as its directors, officers, nominee and alternate nominee for violation of Section 8.1 and its Implementing Rules and Regulations.

³ <https://www.sec.gov.ph/advisories-2023/b2b-trading-center-opc-through-go-diamond/#gsc.tab=0>

The Show Cause Order was sent on 15 January 2024 to the official email of **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC** per the records of the Commission at: bnb.forex.corp@gmail.com; etdeverawams@gmail.com; and utmostpeak2020@gmail.com.

However, only Enrico T. De Vera replied and stated, in verbatim, the following:

“On August 8, 2023, the undersigned have already submitted to your good office documents informing that I, ENRICO T. DE VERA, and Ms. NAZARENE I. LISTANA is NO LONGER CONNECTED in any manner with B&B TRADING CENTER OPC, which was owned by Mr. Joseph D. Sergio after we resigned and withdrew our nomination as President and Corporate Secretary, respectively.

In compliance with the issued SHOW CAUSE in writing, I am submitting this email letter as my reply. Please see attached documents as proof of our evidence that I/we have NO KNOWLEDGE of the business operation activity of the said B&B TRADING CENTER OPC. I, Enrico T. De Vera, and Ms. Nazarene C. Listana must not be charged with administrative sanctions or legal actions against us because we do not violate any SEC laws or rulings.

We also included the email sent to your good office as proof that your good office was respectfully informed before this SHOW CAUSE ORDER was released. I trust that your good office will clear my name and the same with Ms. Nazarene C. Listana for the alleged committed violations by the present officers and directors of B&B TRADING CENTER OPC, who currently manage the corporation.”xxx

The factual backdrop having been laid, we now resolve the instant case on the basis of available evidence.

Section 8, in relation to Section 3, and Section 12 of the Securities Regulation Code (SRC), provides that:

“SEC. 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

“3.1. **“Securities”** are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture

and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

xxx

(b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; xxx

- and -

“SEC. 12. Procedure for Registration of Securities. -

12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

An *investment contract* on the other hand, is defined under *SRC Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR)*, as follows:

“An **investment contract** means a contract, transaction or scheme (collectively “contract”) whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

A common enterprise is deemed created when two (2) or more investors “pool” their resources, creating a common enterprise, even if the promoter receives nothing more than a broker’s commission.”

Section 8 of the SRC is all-embracing. It prohibits any unregistered securities offering. The definition of a “security” under the SRC includes a wide range of vehicles including “investment contracts.” Investment contracts are instruments through which a person invests money in a common enterprise and reasonably expects profits or returns derived from the entrepreneurial or managerial efforts of others.

Therefore, **SECURITIES** cannot be sold or offered for sale within the Philippines without such securities being registered with the Securities and Exchange Commission through the filing and consequent approval of a Registration Statement and a corresponding Permit to Offer and Sell Securities has been issued by the Commission.

Rule 3.1.17 of the 2015 SRC IRR defined **Public Offering** as “any offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

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Salcedo Village, Bel-air, Makati City
☎ (+63 2) 8818 0921
🌐 www.sec.gov.ph | imessagemo@sec.gov.ph



“3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

3.1.17.3 **Advertisement or announcement** on radio, television, telephone, **electronic communications, information communication technology or any other forms of communication;** or

3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, **information communication technology and other means of information distribution.**” (Emphasis supplied)

On the other hand, a “*Broker*” is defined under Section 3.3. of the SRC, as a person engaged in the business of buying and selling securities for the account of others while “*Salesman*” is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

“SEC. 28. **Registration of Brokers, Dealers, Salesman and Associated Persons.** – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

Thus, any person, without proper license from the Commission who acts as brokers, dealers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or penalty of Twenty-One (21) years imprisonment or both pursuant to Section 73 of the SRC.

An **INVESTMENT CONTRACT** has also been defined as a contract or scheme for the placing of capital or laying out of money in a way intended to secure income or profit from its employment⁴. It has been applied to a variety of situations where individuals were led to invest money in a common enterprise with the expectation that they would earn a profit through the efforts of the promoter or of someone other than themselves.⁵

⁴ *SEC vs Howey Co.*, 328 U.S. 293 (1946)

⁵ *Ibid.* Although the definition as stated in the Howey case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 26. 3 of the 2015 SRC Rules replaces this qualifier with “primarily”, acknowledging that an **investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits promised.**

As concluded by the U.S. Supreme Court in the *Howey* case, it held that the arrangements whereby the investors' interest are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed.

The elements of an investment contract are as follows:

- a. A contract, transaction or scheme;
- b. An investment of money;
- c. A common enterprise;
- d. Expectation of profits; and
- e. Profits arise primarily from the entrepreneurial and managerial efforts of others.

Applying the *Howey Test*,⁶ it is evident that **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC**'s offering is considered as an Investment Contract such that:

1. There is an **investment of money**.

UTMOSTPEAK CORPORATION and **B&B TRADING CENTER OPC** actually received money from the public who were enticed to invest therein;

2. The money invested are placed into a **common enterprise**.

UTMOSTPEAK CORPORATION and **B&B TRADING CENTER OPC** pooled the money invested by its investors in a profit-making venture.

3. The placement of money gives rise to an **expectation of profits**.

Investors were enticed to invest their money in consideration for the promise that their money would earn a daily return of 1% or a total of 20% per month for **UTMOSTPEAK CORPORATION** and for **B&B TRADING CENTER OPC**, in the form of different bonuses and commissions.

4. Investors are **expecting to earn profits derived primarily from the efforts of UMP and B&B**.

⁶ *Power Homes Unlimited vs. SEC* (G.R. No. 164182, February 26, 2008)

Investors need not perform material task in order to earn the profit as promised by UMP and B&B.

It is important to emphasize that **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC** as juridical entities, are only allowed to exercise powers inherent to their corporate existence as provided in the Revised Corporation Code of the Philippines and those conferred in their Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

In the Articles of Incorporation of **UTMOSTPEAK CORPORATION** it stated that its primary purpose is:

“To engage in wholesale trading of goods and merchandises.

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts. (emphasis ours)”

while **B&B TRADING CENTER OPC’S** purposes in its Articles of Incorporation are as follows:

“Primary:

To engage in, conduct, and carry on the business of buying, selling, distributing, and marketing at wholesale, insofar as may be permitted by law, all kinds of goods, commodities, wares, and merchandise of every kind and description.;

Secondary:

To purchase, acquire, own, lease, sell and convey real properties, EXCEPT FINANCIAL LEASING.;

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts. (emphasis ours)”

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors or management of the corporation as to the kind of business in which it may engage. However, dealings which are entirely irrelevant to

the purposes are unauthorized and called ultra vires. The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. In fact, **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC**'s purposes in their Articles of Incorporation expressly prohibited it to operate an investment-taking scheme, viz:

“Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.”

Section 44 of the Revised Corporation Code of the Philippines, provides:

SEC. 44 Ultra Vires Acts of Corporations. - No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.”

In an opinion⁷, the Commission pronounced that:

“It is the corporation’s primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of the corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence the primary purpose determines its classification.”

Likewise, the Certificate of Incorporation issued to **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC** explicitly states that:

“This Certificate grants juridical personality to the corporation but **DOES NOT AUTHORIZE it:**

- A. **To issue, sell or offer for sale to the public, securities such** as but not limited to, shares of stock, **investment contracts**, debt instruments and virtual currencies without prior Registration Statement approved by the Securities and Exchange Commission;
- B. To undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, closed-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant,

⁷ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz

financing/lending company, and time shares/club shares/membership certificate issuers or selling agents thereof; nor to operate a fiat money to virtual currency exchange. **nor engage in investment solicitation and investment taking without a Secondary License from this Commission.**

xxx

(emphasis supplied)

The investment scheme of **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC** also operates to defraud investors as it deceives the investing public by making it appear that they have the authority to deal in securities. This also amounts to serious misrepresentation as to what the corporation can do or is doing to the damage and prejudice to the investing public.

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION* (G.R. No. 210316, 28 November 2016) the Supreme Court held that:

“The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1. Of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer.”

Further, the **Financial Products and Services Consumer Protection Act (FCPA)** specifically provides that any form of deceptive solicitation such as offering or selling of investment scheme from the public without a secondary license or permit from the Commission constitutes investment fraud and is an unlawful activity in violation of Section 11 of the said Act.

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise of certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentations as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. Likewise, Section 5.1 (m) of the SRC and Section 179 (j) of the Revised Corporation Code of the Philippines (RCCP) empower the Commission to revoke the franchise or Certificate of Incorporation/Registration of Corporations registered with it.

Under the 2016 Rules of Procedure of SEC, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments involved in the following:

xxx”1. Investigations and administrative actions involving the following:

xxx c) Selling, offering or transacting unregistered securities by entities without a secondary license;

d) Ultra Vires acts committed in violation of the Revised Corporation Code;

2. Petition for revocation⁸ of corporate registration in all cases, except those which fall under the original authority.

3. Administrative actions for fraudulent transactions involving securities;

4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other operating Departments;

5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other operating departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority.”

Further, SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016, provides what constitute serious misrepresentation, to wit:

“From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is **not one of the purposes of the corporation**. Worse, it **does not have a license to offer/sell securities**. PHILBIO operates an investment-taking scheme which is therefore considered an **ultra vires act**. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.”

Considering that nowhere is it stated in the purposes of **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC** that it is authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that it

⁸ Revocation refers to involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code.

does not have the required secondary license from the Commission to offer or sell securities to the public, its activity of offering or selling securities to the public in the form of investment contracts is considered an *ultra vires* act and therefore constitutes serious misrepresentation as to what the corporation can do to the great prejudice of or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/incorporation under PD 902-A.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (R.A. No. 11232) in relation to Section 8.1. of the Securities Regulation Code and Section 6 (i)(2) of PD 902-A, Section 5.1 (m) of the SRC and Section 179 (j) of the RCCP, the Certificates of Incorporation and registration as a corporation of **UTMOSTPEAK CORPORATION** and **B&B TRADING CENTER OPC**, is hereby **REVOKED**.

Further, the below herein individuals shall be disqualified from being a director, trustee or officer of any corporation pursuant to Section 26 of the Revised Corporation Code:

1. **JOSEPH DIMASAKA SERGIO;**
2. **SERAPION DIMASAKA SERGIO, JR.;**
3. **ELIEZER TESORERO TANAEL;**
4. **DAVID CAL EBUENGA;**
5. **MATIAS CASI CALLOS;**
6. **ARIEL ONTOLAN MUTIA;**
7. **JONATHAN DIMASAKA SERGIO;** and
8. **KIMBERLY WAPILI SERGIO;**

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communication Technology Department (ICTD) of this Commission is likewise requested to enter the "revoked" status of the subject corporation in the online database of the Commission.

SO ORDERED.

Makati City, 14 May 2024.

FILBERT CATALDIO F. FLORES III
Director