

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 272, MARIKINA CITY

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OFFICE OF THE
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FORTUNE TOBACCO CORPORATION,
Petitioner,

- versus -

SCA Case No. 2010-796-MK
For: **Declaratory Relief with Prayer
for issuance of a Temporary
Restraining Order and/or Writ
of Preliminary Injunction**

THE DEPARTMENT OF HEALTH,
Respondent.

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ORDER

For resolution is the application for issuance of writ of preliminary injunction in the Petition for Declaratory Relief filed by petitioner Fortune Tobacco Corporation. On June 09, 2010, this court issued a temporary restraining order (TRO), ordering respondent, its agents, representatives, successors-in-interest and any other person assisting it or acting for and on its behalf to cease and desist from implementing AO 2010-0013, to be effective for a period of twenty (20) days from receipt thereof by the respondent. The copy of the said TRO was received by respondent on June 10, 2010, hence, the same is effective up to June 30, 2010.

During the hearing of the said application last June 16, 2009, the petitioner relied solely on the material allegations of its petition, adduced additional documentary evidence to support its plea for a writ of preliminary injunction against the respondent and then rested its case on the incident.¹ On the other hand, the respondent in order to rebut respondent's assertions presented testimonial and documentary evidence. On June 16, 2010, respondent presented Undersecretary Alexander Padilla y delas Alas of the Department of Health (DOH). Then on June 21, 2010, Dr. Edgardo Ulysses Dorotheo y Nguyen, the Project Director of the Southeast Asia Initiative on Tobacco Packs (SIIP) and Mr. Emerito Lumandan Roxas, the President of the New Voice Association of the Philippines were presented as its second and third witness. The last witness presented by the respondent on June 22, 2010 was Prof. Marilyn Ellorin Crisostomo, a consultant of Adamson University. Thereafter, respondent formally offered its documentary evidence and after the rulings of the court thereon, rested its case in opposition to petitioner's application for injunctive writ.

On June 23, 2010, both parties submitted their respective memoranda. Hence, the instant application for the issuance of preliminary injunction is now ripe for resolution.

Petitioner in its petition and memorandum claimed that Administrative Order 2010-0013 issued by respondent DOH on May 12, 2010 is null and void and without legal effect because it is in contravention to an already existing statute. According to petitioner, the said administrative order requiring tobacco product packages to bear graphic health information and prohibiting the use of descriptors² modifies and amends the provision of

¹ TSN of June 16, 2010, pp. 7-11

² Article V of AO 2010-0013

"The Department hereby promulgates the following rules and regulations governing packaging and labelling of tobacco products:

A. Graphic Health Information

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R.A. No. 9211 (Tobacco Regulation Act of 2003) which requires only textual health warning and statement of "NO SALE TO MINORS" or "NOT FOR SALE TO MINORS" on every tobacco product package.³ Petitioner further claimed that Section 13 (g) of RA No. 9211⁴ explicitly disallowed any other printed warnings to be placed on the tobacco product packages except the health warnings and the message as above-mentioned. And while the issuance by respondent of the said AO 2010-0013 was allegedly made pursuant to the Framework Convention on Tobacco Control (FCTC), petitioner claimed that the same is unconstitutional because it was an invalid exercise and usurpation of legislative power.

The assailed administrative order provides that these policies and guidelines on graphic health information and false and misleading descriptors shall apply to all tobacco products and to all tobacco manufacturers operating and existing within the Republic of the Philippines.⁵ It also provides for the strict adherence on the said policies and tobacco manufacturers are required to strictly follow the DOH templates not later than three (3) months before they are to be used.⁶ Also, the tobacco product packages that do not comply with this administrative order shall be prohibited after ninety (90) days from effectivity of the same and must be withdrawn not later than such date and no extensions shall be granted on the tobacco manufacturers.⁷ Lastly, it contains penal provision authorizing the DOH or any office designated by its Secretary to investigate any reported violation of this administrative order and after due notice and hearing and if found responsible thereof, apply such administrative sanctions and penalties, including seizure, recall and condemnation, where appropriate, on the concerned manufacturers.⁸

The evidence submitted by petitioner during the hearing of this incident, though not conclusive or complete and with the provisions of the said administrative order that will

1. Scope of Graphic Health Information.-Each unit packet and package of tobacco products, including package inserts and onserts, and any outside packaging and labelling of such products for sale, distribution or importation within the country, shall bear large, clear, visible, and legible full-color graphic health information, as attached in Annex I.

x x x.

B. Misleading Descriptors

1. General Prohibition.- Each unit packet and package of tobacco products, including package inserts and onserts, and any outside packaging and labelling of such products for sale, distribution or importation within the country shall not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign (including colors, images, or numbers) or any package or product design feature that directly or indirectly create or are likely to create the false impression that a particular tobacco product or brand is less harmful than any other tobacco products or brand.

Use of misleading descriptors on tobacco product packages such as, but not limited to "low tar", "light", "ultra-light", "mild", "extra", "ultra", and similar terms in any language that might mislead consumers, is prohibited. Use of corresponding symbols or colors signifying the same is also prohibited. No misleading descriptor shall be used as part of a brand name or trademark for tobacco products introduced after the effectivity of this Order.

x x x.⁹

³ Section 13. Warning on Cigarette Packages. - Under this Act, x x x

x x x.

- c. Beginning 1 July 2006, the health warning shall be located on the bottom portion of one (1) front panel of every tobacco product package and occupy not less than thirty percent (30) of such front panel including any border or frame. x x x."

⁴ *Ibid.*

- (g) No other printed warnings, except the health warning and the message required in this Section, paragraph f, shall be placed on cigarette packages.

⁵ AO 2010-0013.- Article III.(Scope and Coverage)

⁶ *Ibid.*, Article V (6)

⁷ *Ibid.*, Article VI (1) - Compliance

⁸ *Ibid.*, Article VII - Violations

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affect the petitioner, gave this court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. The rights of the petitioner as tobacco manufacturer would be adversely affected by AO 2010-0013. And in praying for this injunctive relief, petitioner sought to protect its rights from the enforcement of the said assailed administrative order, which requires additional health warning other than those already required under RA 9211.

Two requisites are necessary if a preliminary injunction is to issue, namely, the existence of a right to be protected and the facts against which the injunction is to be directed are violative of said right.⁹

Petitioner being one of the tobacco manufacturers already operating and existing within the Philippines was able to establish the existence of a clear and positive right which should be judicially protected through the writ of injunction and that there is substantial invasion of such right that tends to endanger the existence of said right. Petitioner demonstrated a clear right threatened by the assailed administrative order. "Further, while a clear showing of the right is necessary, its existence need not be conclusively established. In fact, the evidence required to justify the issuance of a writ of preliminary injunction in the hearing thereon need not be conclusive or complete. The evidence need only be a 'sampling' intended merely to give the court an idea of the justification for the preliminary injunction, pending the decision of the case on the merits."¹⁰ Thus, to be entitled to the writ, petitioner is only required to show that it has an ostensible right to the final relief prayed for in its petition.¹¹

Although respondent DOH presented testimonial and documentary evidence to rebut petitioner's plea of an injunctive relief, they dwell more on the wisdom and propriety of the issuance of AO 2010-0013, which evidence will be better assessed and considered in the trial proper.

While it is true that AO 2010-0013 enjoys the presumption of validity and constitutionality until proven otherwise, but for the purpose of issuing an injunctive relief, this matter still lacks relevance and premature to consider. Obviously, a law need not be declared unconstitutional first before a preliminary injunction against its enforcement may be granted.¹²

Further,

"A preliminary injunction is merely a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the status quo until the trial court hears fully the merits of the case. The status quo is the last actual, peaceable and uncontested situation which precedes a controversy. The status quo should be that existing at the time of the filing of the case. A preliminary injunction should not establish new relations between the parties, but merely maintain or re-establish the pre-existing relationship between them."¹³

⁹ Lopez v. Court of Appeals, G.R. No. 110929, 20 January 2000, 322 SCRA 686, 691

¹⁰ Los Baños Rural Bank, Inc. v. Africa, G.R. No. 143994, 11 July 2002, 384 SCRA 535, 543.

¹¹ *Ibid.*

¹² Filipino Metals Corp. vs. Secretary of DTL, 463 SCRA 616, 625, citing the case of Board of Optometry vs. Colet, 260 SCRA 88

¹³ Ruano, in substitution of former Commissioner Chato of the BIR v. Pitargue, et al., G.R. No. 140284, 2005 Jan 21, 1st Division

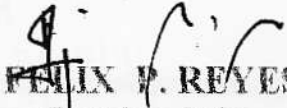
After thorough study of the allegations and arguments raised by the petitioner both in its petition and memorandum, as well as the testimonial and documentary evidence presented by respondent with its arguments in its memorandum, the Court holds that the interest of justice will be better served if the status quo is maintained.

WHEREFORE, petitioner's application for issuance of the writ of preliminary injunction is hereby GRANTED. Upon approval of the injunction bond, let a writ of preliminary injunction be issued enjoining respondent DOH, its agents, representatives, successors-in-interest, and any other persons assisting it or acting for and on its behalf or interest or under its direction and all other officials from implementing AO 2010-0013.

The petitioner is hereby ordered to file a bond executed to the party or persons enjoined in the amount of FIVE MILLION (P5,000,000.00) PESOS, which will answer for the damages which said respondent enjoined may sustain by reason of the injunction, if the court should finally decide that the petitioner is not entitled thereto.

SO ORDERED.

City of Marikina, July 01, 2010.


FELIX P. REYES
Presiding Judge