

Republic of the Philippines
REGIONAL TRIAL COURT
THIRD JUDICIAL REGION
BRANCH 15
Malolos, Bulacan

MIGHTY CORPORATION,
Plaintiff,

-versus-

CIVIL CASE NO. 393-M-2010

THE DEPARTMENT OF HEALTH
Rep. by ENRIQUE ONA,
Defendant.

x-----x

ORDER

For resolution is the propriety of the issuance of a preliminary injunction being sought by the plaintiff in this case for declaratory relief.

However, before the court proceeds with the said resolution, there is a need to first address the motion for reconsideration (of the written order dated 22 July 2010) filed by the defendant dated July 26, 2010 which is based on two grounds, viz: that no error or mistake in the issuance of the first order (granting its verbal request to file a motion to dismiss) that would justify the performance of the court's inherent power to amend and control its processes and orders and that the assailed order violated defendant's right to due process in issuing the written order without hearing, thus, not in conformity with law and justice.

The assailed written order merely directed the defendant purposely to comment and to file its opposition as to why the prayer for a writ of preliminary injunction should not be granted especially since the court had already issued a temporary restraining order (TRO). No conceivable prejudice to the defendant would result therefrom since, just the same, the intended motion to dismiss can be filed within the reglementary period before answer at the instance of the defendant without any direct order from this Court. It is hereby emphasized that there is nothing in the assailed written order which precludes the defendant to file any motion deemed proper under the given circumstance. It is also in line with due process that defendant is allowed to file its comment, although not mandatory, before the court resolves the pending incident that the defendant should file its comment.

The court now proceeds to resolve the application for preliminary injunction.

After a judicious assessment of the evidence thus far presented and limiting the issue as to the propriety of restraining the implementation of the assailed administrative order, the court finds merit in granting the preliminary injunction.

In compliance with the provisions of RA No. 9211, otherwise known as the Tobacco Regulation Act of 2003, plaintiff complied with the printing of the required government warnings in all packages of its tobacco products. However, on May 12, 2010, the defendant Department of Health (DOH) issued Administrative Order No. 2010-0013 which requires, among others, the putting of graphic health information on the upper portions of each tobacco product pack or package in a manner that ensures maximum visibility, and with no other warnings, except the health warning and the message required. The implementation of the said administrative order is sought to be restrained for being violative of plaintiff's rights to liberty and property and causing irreparable injury and unwarranted expenses in its enforcement.

Upon a close perusal of the provisions of DOH Administrative Order No. 2010-0013, it appears that said Administrative Order was issued in reference to RA No. 7394 or the Consumer Protection Act which aims to protect consumers against deceptive, unfair and unconscionable sales acts or practices. In order to promote the right to health of all people and instill health consciousness, the DOH deemed it proper to provide for effective, distinct and highly visible graphic health information which is to be placed on tobacco product packages.

On the other hand, RA No. 9211 also known as the Tobacco Regulation Act of 2003, provides for the regulation on the packaging, use, sale, distribution and advertisements of tobacco products, one of the purposes of which is to regulate the labeling of tobacco products. Thus, government warnings had been printed on all cigarette packages.

While both the DOH Administrative Order No. 2010-0013 and Tobacco Regulations Act of 2003 aim to protect the public from hazardous products and promote the right to health and instill health consciousness, the administrative


order poses an additional and/or new warning on tobacco products which will directly affect the plaintiff's business. The seemingly apparent conflict in the simultaneous implementation of both the law and the administrative order will necessarily result to injury which at the outset should be restrained.

WHEREFORE, in view of the foregoing, let a writ of preliminary injunction be issued restraining the defendant Department of Health, or any of its agents or representatives from implementing Administrative Order No. 2010-0013. The plaintiff is ordered to post bond in the amount of P500,000.00 executed in favor of the defendants to answer for any and all damages which the latter may sustain by reason of the injunction, in the event it is subsequently decided that the former is not entitled to the issuance of such injunction.

In the meantime, the defendant is directed to file its comment/opposition to the plaintiff's declaratory relief.

SO ORDERED.

Given this 29th day of July, 2010 hereat Malolos City, Bulacan.


ALEXANDER P. TAMAYO
JUDGE

APT/micopa