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United States District Court
For the Northern District of California

ORIGINAL
FILED

SEP 26 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 08-04482 CW

PHILIP MORRIS USA,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Defendants.

ORDER
(1) DENYING
PLAINTIFF'S
APPLICATION FOR A
TEMPORARY
RESTRAINING ORDER
AND (2) REQUIRING
DEFENDANTS TO SHOW
CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD
NOT ISSUE

Plaintiff filed an ex parte application for a temporary restraining order and a motion for a preliminary injunction enjoining Defendants from enforcing City Ordinance No. 194-08 (Ordinance). Defendants have not yet filed an opposition. Having considered the papers filed by Plaintiff, the Court DENIES its application for a temporary restraining order.

A temporary restraining order may be issued only if "immediate and irreparable injury, loss, or damage will result to the applicant" if the order does not issue. Fed. R. Civ. P. 65(b). To obtain a temporary restraining order, the moving party must establish either: (1) a combination of probable success on the

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1 merits and the possibility of irreparable harm, or (2) that serious
2 questions regarding the merits exist and the balance of hardships
3 tips sharply in the moving party's favor. See Baby Tam & Co. v.
4 City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998); Rodeo
5 Collection, Ltd. v. W. Seventh, 812 F.2d 1215, 1217 (9th Cir.
6 1987). Plaintiff has failed to make a sufficient showing of likely
7 success on the merits of its claims and of irreparable harm to
8 justify granting the ex parte relief it seeks. Further,
9 Plaintiff's unexplained delay in filing its application for a
10 temporary restraining order until days before the enforcement of
11 the Ordinance belies its claim of irreparable hardship. Therefore,
12 Plaintiff's motion for a temporary restraining order is DENIED.

13 Defendants are ORDERED to show cause before the Court on
14 October 30, 2008, at 2:00 p.m. or as soon thereafter as counsel may
15 be heard, why an order should not be issued pursuant to Rule 65 of
16 the Federal Rules of Civil Procedure enjoining Defendants from
17 enforcing San Francisco Ordinance No. 194-08. Defendants must file
18 any opposition to the Plaintiff's motion on or before October 9,
19 2008. Plaintiffs may reply on or before October 16, 2008.

20 IT IS SO ORDERED.

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22 Dated: **SEP 25 2008**

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CLAUDIA WILKEN
United States District Judge

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