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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILIP MORRIS USA INC.,
Plaintiff,
v.
SILVER VIEW SUPERMARKET, et al.,
Defendants

No. C-06-0701 MMC

**ORDER DENYING WITHOUT
PREJUDICE APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING
ORDER**

Before the Court is plaintiff Philip Morris USA Inc.'s ex parte application, filed January 31, 2006, for a temporary restraining order against defendant Silver View Supermarket ("Silver View"), by which application plaintiff seeks to enjoin Silver View from purchasing or selling counterfeit Marlboro cigarettes. In an order filed February 1, 2006, the Court ordered plaintiff to file supplemental briefing on the following issues: (1) whether Silver View operated the supermarket at which plaintiff has purchased counterfeit Marlboro cigarettes; and (2) whether the Court may issue an order permitting plaintiff to inspect Silver View's inventory and to seize and retain control of any counterfeit cigarettes found in Silver View's inventory.

Having reviewed plaintiff's supplemental briefing, the Court finds plaintiff has adequately demonstrated that Silver View operated the supermarket at which the counterfeit cigarettes were purchased. Plaintiff has not demonstrated, however, that it is entitled to the requested seizure order absent compliance with the requirements of

United States District Court

For the Northern District of California

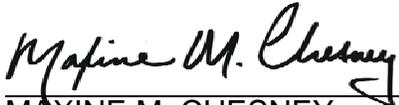
1 15 U.S.C. § 1116(d).

2 Accordingly, the Court hereby DENIES plaintiff's application, without prejudice to
3 plaintiff's filing an application in compliance with the requirements of § 1116(d).

4 If plaintiff elects to forgo its request for a seizure order, plaintiff may so advise the
5 Court, and the Court will issue the requested temporary restraining order with appropriate
6 modification in accordance with the above findings.

7 **IT IS SO ORDERED.**

8 Dated: February 3, 2006


9 MAXINE M. CHESNEY
United States District Judge

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