

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2010 SEP -9 PM 2:48

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

DELIVERANCE POKER, LLC,
Plaintiff,

vs.

TILTWARE, LLC AND
MICHAEL MIZRACHI,
Defendants.

§
§
§
§
§
§
§
§
§

10-CV-664-JRN

ORDER DENYING PLAINTIFF'S MOTION FOR TRO

Before the Court in the above-entitled and styled cause of action is Plaintiff, Deliverance Poker, LLC's ("Plaintiff") Motion for Temporary Restraining Order. After reviewing Plaintiff's pleadings, the Court finds that Plaintiff has failed to satisfy the four-part test necessary for the entry of an *ex parte* Temporary Restraining Order. Accordingly, the Court finds that Plaintiff's Motion for Temporary Restraining Order is **DENIED**.

Factual Background

In its pleadings, Plaintiff contends that it entered into a sponsorship contract with Michael Mizrachi ("Defendant"). *See* Pl.'s Mem. in Supp. of Mot. for TRO at ¶ 4. According to Plaintiff, the contract required Defendant to exclusively wear Plaintiff's memorabilia and promote Plaintiff's brand. *See id.* Recently, Defendant entered into a separate sponsorship contract with Tiltware, LLC and began to promote the Tiltware brand. *See id.* at ¶ 5. Defendant's promotion of the Tiltware brand, according to Plaintiff, is a breach of the contract Defendant originally entered with Plaintiff. *See id.* Plaintiff seeks a Temporary Restraining Order to prevent Defendant from promoting its competitor's brand. *See id.* at ¶ 6.

Analysis

Plaintiff fails to establish that there is a substantial likelihood that it will prevail on the merits. It is well settled amongst district courts in the Fifth Circuit that:

The movant for a temporary restraining order must establish the following four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

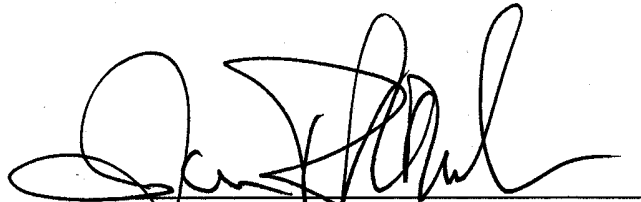
Suver v. Pratt, No. C-10-99, 2010 WL 1371552, *1, n.1 (S.D. Tex. Apr. 6, 2010) (citation omitted); *see also Hernandez v. Texas*, No. 09-cv-55, 2010 WL 769487, *1 (E.D. Tex. Mar. 4, 2010) (citation omitted); *Rotella v. Mid-Continent Cas. Co.*, No. 08-cv-0486, 2009 WL 1287834, *2 (N.D. Tex. May 8, 2009) (citation omitted). Plaintiff, in its pleadings, failed to submit a contract for the Court to review. This omission leaves the Court with no way to determine whether there is a “substantial likelihood” that Plaintiff’s breach of contract or tortious interference claims are meritorious.¹ Consequently, the Court finds that Plaintiff has failed to satisfy the four-part test necessary for an *ex parte* Temporary Restraining Order to be granted. Finally, because Plaintiff failed to carry its burden as to the first prong of the four-part test, it is unnecessary for this Court to determine whether it satisfied the remaining prongs.²

¹*See PCI Trans., Inc. v. Fort Worth & W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005) (holding that the trial court correctly found that the plaintiff failed to “establish that there is a substantial likelihood that it will prevail on the merits[]” because the plaintiff “never submitted the contract to the court for it to review[,]” leaving the court with no way to “possibly evaluate whether the plaintiff was likely to prevail on the merits.”).

²*See Davis v. Epps*, No. 08-cv-85, 2008 WL 5642493, *1 (N.D. Miss. Dec. 3, 2008) (noting that each prong of the four-part test “must be met before the court can grant such a drastic remedy as a temporary restraining order . . .”).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Temporary Restraining Order is **DENIED**.

Signed this 9th day of September, 2010.



JAMES R. NOWLIN
UNITED STATES DISTRICT JUDGE