

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

R.J. REYNOLDS TOBACCO
COMPANY, R.J. REYNOLDS VAPOR
COMPANY, AMERICAN SNUFF
COMPANY, LLC, SANTA FE
NATURAL TOBACCO COMPANY,
INC., COUSINS II INC. dba VERNON
BP, and LANG'S AUTOMOTIVE
SERVICE INC. dba LANG'S ONE STOP
MARKET,

Plaintiffs,

v.

CITY OF EDINA, EDINA CITY
COUNCIL, and SCOTT NEAL, IN HIS
OFFICIAL CAPACITY AS CITY
MANAGER OF THE CITY OF EDINA,

Defendants.

Case No. 0:20-cv-1402-PJS-LIB

**PLAINTIFFS' COMBINED
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND REPLY
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

TABLE OF CONTENTS

	Page
Introduction	1
Argument	3
I. The Court Should Deny the Motion to Dismiss	3
A. Federal Law Expressly Preempts the City’s Ban on Flavored Tobacco Products	3
1. The City’s ban is a tobacco product standard that is different from, and in addition to, federal standards	3
2. The Act’s saving clause does not save the City’s ban	10
B. Federal Law Impliedly Preempts the City’s Ban	12
C. The City Manager and the City Council Should Remain Parties.....	15
II. The Court Should Grant the Motion for a Preliminary Injunction and Consolidate under Rule 65	16
Conclusion	18

TABLE OF AUTHORITIES

Page

CASES

Alex’s Transp., Inc. v. Colorado Pub. Utilities Comm’n,
88 F. Supp. 2d 1147 (D. Colo.), *aff’d*, 242 F.3d 387 (10th Cir. 2000) 3, 17

Billets v. Mentor Worldwide, LLC,
2019 WL 4038218 (C.D. Cal. Aug. 27, 2019)..... 4

Buckman Co. v. Plaintiffs’ Legal Comm.,
531 U.S. 341 (2001) 12

Bell v. Blue Cross & Blue Shield,
823 F.3d 1198 (8th Cir. 2016) 13

Carter v. Novartis Consumer Health, Inc.,
582 F. Supp. 2d 1271 (C.D. Cal. 2008) 10

Crosby v. Nat’l Foreign Trade Council,
530 U.S. 363 (2000)..... 12

Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.,
541 U.S. 246 (2004)..... 8, 9

Exxon Mobil Corp. v. Allapattah Servs., Inc.,
545 U.S. 546 (2005) 15

Fireman’s Fund Ins. Co. v. City of Lodi, Cal.,
302 F.3d 928 (9th Cir. 2002) 15, 16

Hillman v. Maretta,
569 U.S. 483 (2013)..... 12

Johnson v. Brown & Williamson Tobacco Corp.,
345 F. Supp. 2d 16 (D. Mass. 2004) 14

..

Kentucky v. U.S. ex rel. Hagel,
759 F.3d 588 (6th Cir. 2014) 16

Nat’l Meat Ass’n v. Harris,
565 U.S. 452 (2012)..... 8, 9

Nat’l Ass’n of Tobacco Outlets v. City of Providence,
731 F.3d 71 (1st Cir. 2013)..... 7, 11

Olmstead v. Bayer Corp.,
2017 WL 3498696 (N.D.N.Y. Aug. 15, 2017) 4

Poosh v. Philip Morris USA, Inc.,
904 F. Supp. 2d 1009 (N.D. Cal. 2012) 14

Puerto Rico v. Franklin Cal. Tax-Free Tr.,
136 S. Ct. 1938 (2016)..... 4

Puerto Rico Tel. Co. v. Municipality of Guayanilla,
450 F.3d 9 (1st Cir. 2006)..... 10

Shanklin v. Fitzgerald,
397 F.3d 596 (8th Cir. 2005) 6, 12, 16

Thunder Basin Coal Co. v. Reich,
510 U.S. 200 (1994) 16

United States v. Stanko,
491 F.3d 408 (8th Cir. 2007) 8, 10

U.S. Smokeless Tobacco Mfg. Co. v. City of New York,
708 F.3d 428 (2d Cir. 2013)..... 7, 11

STATUTES AND RULES

21 U.S.C. § 387 4

21 U.S.C. § 387 note.....*passim*

...

21 U.S.C. § 387g*passim*
21 U.S.C. § 387p*passim*
21 U.S.C. § 678 9
Edina City Code § 12-189 5, 8
Family Smoking Prevention and Tobacco Control Act of 2009, Public Law
111-31, 123 Stat. 1776*passim*
Fed. R. Civ. P. 65..... 17

OTHER AUTHORITIES

H.R. 1376, 109th Congress, 1st Session (March 17, 2005) 15
Merriam-Webster Dictionary (online ed.)..... 11
Oxford English Dictionary (2020)..... 5
Webster’s Third New Int’l Dictionary (1981) 5

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.