

NO. 4004012

AMERICAN PROMOTIONAL  
EVENTS, INC. d/b/a TNT FIREWORKS SUPERIOR COURT

JUDICIAL DISTRICT OF NEW LONDON  
AT NEW LONDON

V.

RICHARD BLUMENTHAL,  
ATTORNEY GENERAL AND  
LEONARD C. BOYLE, COMMISSIONER  
OF PUBLIC SAFETY, ET AL JULY 12, 2006

MEMORANDUM OF DECISION  
ON PLAINTIFF'S MOTION TO REARGUE

Pursuant to Section 11-12 of the Rules of Practice, the plaintiff has moved to reargue the court's memorandum of decision, dated June 14, 2006, denying the plaintiff's request for declaratory and injunctive relief and entering judgment for the defendants. The plaintiff seeks reconsideration limited to the court's conclusion that the subject pyrotechnic is "neither a sparkler nor a fountain" under P.A. 06-177 because it does not emit "a shower of sparks."

In its memorandum of decision, the court found that Piccolo Pete emitted some smoke and sparks from the flame and made a whistling sound. The sparks, however, were not a shower of sparks. The court concluded that, since Piccolo Pete did not emit a shower of sparks, it was neither a sparkler nor a fountain prohibited under P.A. 06-177.

**FILED**

JUL 12 2006

SUPERIOR COURT - NEW LONDON  
JUDICIAL DISTRICT AT NEW LONDON

The plaintiff notes that P.A. 06-177 defines "fountain" as . . . "any cardboard or heavy paper cone or cylindrical tube containing pyrotechnic mixture that upon ignition produces a shower of colored sparks or smoke." (Emphasis in original.) The plaintiff argues that, since the definition is disjunctive, a fountain need not produce any sparks to be legal when, as found by the court, it produces smoke and otherwise meets the pyrotechnic limitations imposed by P.A. 06-177. State v. Robert H., 273 Conn. 56, 65 n.8 (2005) "(use of the disjunctive 'or' between the two parts of the statute evidenced a 'clear legislative intent of separability')." "

The defendants correctly point out that, in its motion to reargue, the plaintiff claims, for the first time during the pending of this litigation, that Piccolo Pete is a legal fountain as defined by P.A. 06-177 because it emits smoke. The defendants argue that the plaintiff's claim is a second bite of the apple and, therefore, is prohibited. Opoku v. Grant, 63 Conn App. 686, 692-93 (2001).

In the Opoku case, the Appellate Court stated a page 692:

[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of the facts. (Internal quotation marks omitted.)

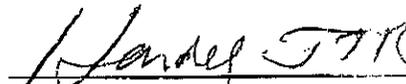
After noting that the plaintiff did not claim in his motion that the court overlooked a principal of law that might have had some controlling effect on its prior ruling, the Appellate Court upheld the trial court's denial of the plaintiff's motion to reargue. Here, the plaintiff claims that there is a principal of law, the use of the disjunctive "or" in P.A. 06-177, which has been overlooked in the court's decision

In addition, it is well established that "it is the inherent authority of every court, so

long as it retains jurisdiction, to reconsider a prior ruling." Steele v. Stonington, 222 Conn. 217, 219 n.4 (1993).

Based on the foregoing, the court grants the plaintiff's motion to reargue and finds that, since Piccolo Pete emits smoke, it is a fountain which is not prohibited under P.A. 06-177.

Accordingly, the court enters judgment in favor of the plaintiff, without costs, and grants a temporary and permanent injunction enjoining defendants from bringing or threatening any enforcement action against the plaintiff or its retail agents for possessing, distributing, selling or offering for sale the "Piccolo Pete" fountain.

  
Seymour L. Hendel, JTR

The court hereby amends a typographical mistake in the third line of the third paragraph on page 5 of its memorandum of decision, dated June 14, 2006, by substituting the word "fountain" for the word "fireworks."