

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Car Parts Warehouse, Inc.,)	
)	
Complainant,)	Case No. 17-0031-TP-CSS
)	
v.)	
)	
Airespring, Inc.,)	
)	
Respondent.)	

**MOTION TO DISMISS
OF RESPONDENT AIRESRING, INC.**

Airespring, Inc. (hereinafter, "Airespring" or "Respondent"), by its attorney and pursuant to Ohio Administrative Code Section 4901-1-08(A) of the Commission's Rules and Ohio Revised Code Ann. § 4705.01, moves to dismiss the Complaint filed in the above-captioned case due to it being filed on behalf of a corporation that is not properly represented by an attorney admitted to the practice of law in the State of Ohio. A memorandum in support of this Motion to Dismiss ("Motion") is attached.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Per Commission Rule, corporations must be represented before the Commission by an attorney admitted to the practice of law in the State of Ohio. Ohio Admin Code § 4901-1-08(A). Complainant Car Parts Warehouse, Inc. ("Car Parts" or "Complainant") is an Ohio corporation incorporated on December 11, 1985. Car Parts is not represented in this case by an attorney permitted to practice in the State of Ohio (or any state for that matter). Accordingly, the Complaint must be dismissed.

Upon information and belief, Carrie Moore, who signed the Formal Complaint allegedly on behalf of Complainant corporation Car Parts works, is a Sales Associate at One View Communications, Inc. ("One View"). One View is an Ohio corporation located at 282 Tinkers Trl., Auroa, Ohio 44202. The telephone number listed for Complainant on the first page of the Formal Complaint, (216) 245-9550, is the telephone number for One View.

The Ohio Supreme Court holds that a corporation is an artificial person, created by the General Assembly that derives its power, authority and capacity from Ohio statutes. *Union Sav. Ass'n v. Home Owners Aid*, (1970), 23 Ohio St.2d 60, 62. A corporation cannot maintain litigation in propria persona, and cannot maintain litigation or appear in court represented by corporate officers or agents only. *Id.* at 62-64. A person cannot practice law or commence an action in which he is not the party

concerned, either in his own name or the name of another person, unless he has been admitted to the bar by order of the Supreme Court. *See Id.* at 64, *citing* Ohio Revised Code Ann. § 4705.01.

While Carrie Moore may hold herself out as an “agent” of Complainant Car Parts, Ohio law prohibits her from commencing an action on behalf of Car Parts because she is not an attorney admitted to practice in Ohio. Since Ms. Moore is neither permitted to *commence* a formal complaint or maintain such an action, the Commission must dismiss the Complaint.

The practice of law generally has been defined as encompassing three types of activities: “(1) legal advice and instructions to clients advising them of their rights and obligations; (2) preparation of documents for clients, which requires legal knowledge not possessed by an ordinary layman; and (3) appearing for clients in public tribunals and assisting in the interpretation and enforcement of law, where such tribunals have the power and authority to determine the rights of life, liberty, and property according to the law.” *Mahoning Cty. Bar Ass’n. v. The Senior Services Group, Inc.* (Bd. Commrs. on the Unauth. Practice of Law 1994), 66 Ohio Misc.2d 48, 52. The filing of a formal complaint with the Commission pursuant to Ohio Rev. Code Ann. § 4927.21 plainly falls within the third category of activities described above – clearly, the Commission has the right to determine the rights and responsibilities of public utilities vis-à-vis their customers in the formal complaint process.

Consequently, the preparation, signing, and filing of documents instituting formal complaints before the Commission constitute the practice of law. *Cleveland Bar Assn. v. Woodman*, 98 Ohio St.3d 436, 2003-Ohio-1634. And, the Commission has cited and relied on this precedent. See *Terry Metzenbaum v. AT&T Corp.*, Case No. 03-142-TP-CSS, Entry, May 22, 2003, p.4.

In the current case, the preparation and filing of a formal complaint by Carrie Moore, who is not an attorney licensed to practice law in Ohio, on behalf of Car Parts constitutes an unlawful practice of law. Moreover, the relief requested in the Complaint seeks the Commission to terminate the remainder of Complaint's "contract" with "no termination penalties from Airespring." Complaint, page 3. Despite no contract being attached to the Complaint, contract interpretation, and litigation thereof, will require legal knowledge not expected to be possessed by an ordinary layperson. It is neither appropriate nor lawful for Carrie Moore or Car Parts to be commencing this action without representation by an attorney.

For all the foregoing reasons, and particularly since the corporation Complainant was not even authorized to commence this legal proceeding without being represented by Ohio counsel, Respondent Airespring respectfully requests that this Complaint be dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certified that a true copy of the foregoing Motion to Dismiss of Respondent Airespring, Inc. was served this 24th day of January 2017, by regular U.S. Mail upon the Complainant as follows:

Car Parts Warehouse, Inc.
c/o Carrie Moore
5200 W. 130th St.
Brook Park, Ohio 44142



Fazeel S. Khan

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Case No(s). 17-0031-TP-CSS

Summary: Motion Motion to Dismiss of Respondent Airespring, Inc. electronically filed by Mr. Fazeel S. Khan on behalf of Blaugrund Haynes Kessler Myers & Postalakis and Khan, Fazeel S. Mr.