

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

v.)

Airgonomics, Inc., an Oklahoma)
corporation, and Mark A. Wingo,)
an individual,)

Defendants.)

Case No.

DEC 27 2007
PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

CJ - 2007 - 11066

APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS, TEMPORARY INJUNCTION
AND ORDER FOR ACCOUNTING

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order against Defendants Airgonomics, Inc. and Mark A. Wingo ("Defendants"); an order freezing the assets of Defendants; and an order for an accounting by Defendants, pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order freezing assets, and an order for an accounting by Defendants, until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such

hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE DEFENDANTS

Airgonomics, Inc. ("AI") is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. At all times material hereto, AI issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Mark A. Wingo ("Wingo"), an individual and Oklahoma resident, controls all acts of AI. At all times material hereto, Wingo offered and/or sold securities in and/or from Oklahoma as described herein.

II. NATURE OF THE CASE

Beginning in or about July, 2007, and continuing to the present, Defendants have engaged in the issuance, offer and/or sale of the common stock of AI (the "AI Stock") in and/or from the state of Oklahoma to investors ("Investors").

Defendants, in connection with the offer and sale of the AI Stock, are representing to Investors that AI has unique technology to provide energy for electrically powered automobiles (the "Technology"). Defendants, in connection with the offer and sale of the AI Stock, are representing that AI either holds or has applied for a patent with respect to this technology. Neither AI nor Wingo have applied for or been granted a patent.

Defendants, in connection with the offer and sale of the AI Stock, are also representing to Investors that professors within the engineering department of one of the two major Oklahoma universities are assisting AI with further development of the Technology. Neither AI nor Wingo

have any agreement with one or more professors of a major Oklahoma university or any with the universities themselves to develop the Technology.

Wingo is a convicted felon and is currently serving a term of supervised release from federal prison. Wingo's convictions include convictions by the state of Oklahoma for larceny and receiving, possessing, and/or concealing a stolen vehicle, and by the United States for uttering a counterfeit security, a conviction for which Wingo served 16 months in custody.

III. VIOLATIONS OF THE ACT

A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities

The AI stock is a security as defined by Section 1-102 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents

AI is an issuer as defined in Section 1-102 of the Act.

Defendant Wingo is not registered under the Act as an agent under Section 1-402 of the Act. Defendant Wingo, by virtue of his efforts and activities in transacting business in this state, is an agent, as defined in Section 1-102 of the Act. Defendant Wingo transacted and is transacting business in this state as an agent without benefit of registration under the Act.

AI employed at least one unregistered agent.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with the Offer, Sale or Purchase of Securities**

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, made, and are making, untrue statements of material fact including, but not limited to, the following matters:

- a. that AI and/or Wingo hold or have applied for a patent for the Technology, and
- b. that engineering professors are working with AI to further develop the Technology.

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading, including, but not limited to, the following matters:

- a. Wingo's criminal background;
- b. that the AI Stock is not and has not been registered under the Act;
- c. that the individuals who offer and sell the AI Stock are not and have not been registered under the Act;
- d. how the proceeds from the sale of the AI Stock will be utilized; and
- e. any general or specific risk factors associated with the purchase of the AI Stock.

**D. Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

Defendants, in connection with the offer, sale or purchase of securities, and through the use of the untrue statements of material fact and the omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE,
ACCOUNTING AND TEMPORARY INJUNCTION**

A. Temporary Restraining Order

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
2. Order other appropriate or ancillary relief, which may include:
 - a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and

appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,

c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest; or

3. Order such other relief as the court considers appropriate.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may determine Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest persons to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost,

removed or transferred. A temporary restraining order to issue *instanter* against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Asset Freeze and Accounting

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06. Within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants make use of untrue statements of material fact and omit to state material facts as alleged in Plaintiff's verified petition, in violation of Section 1-501 of the Act. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. These circumstances make it necessary that the court freeze specific assets to

preserve the *status quo* by preventing the dissipation of assets and to account for the money raised through violations of the Act so as to protect Investors and to provide effective relief.

C. Temporary Injunction

Once Plaintiff has shown the Defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc., supra*; *SEC v. Culpepper, 270 F.2d 241, 249 (2d Cir. 1959)*. In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc., supra*. Here, the Defendants have violated the Act thereby creating a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." *SEC v. Culpepper, supra*; *Oklahoma Securities Commission v. CFR International, Inc., supra*.

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293, 295 (Okla. Ct. App. 1980)* (citing *Bradford v. SEC, 278 F.2d 566 (9th Cir. 1960)*). Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

D. An Ex Parte Order Should be Issued

While courts have been cautious with the use of *ex parte* orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas, 577 S.W. 2d 323 (Tex. App. Houston [14th*

Dist.] 1979, no writ). The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and assets are frozen. Providing notice of this action to Defendants could lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by *inter alia* providing monetary redress. The issuance of a temporary restraining order *instanter*, an asset freeze, and an order for an accounting by the Defendants will help maximize the relief to Investors and protection of the public interest.

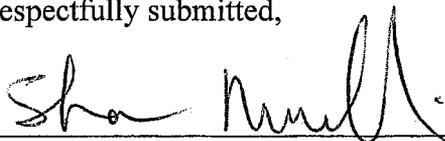
V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made, and are making, untrue statements of material fact; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated as a fraud or deceit upon other persons. Defendants have engaged and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order freezing assets of Defendants, an order for an accounting,

and a temporary restraining order, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



Shaun Mullins (OBA #16869)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

CERTIFICATE OF SERVICE

The undersigned certifies that on the 27th day of December, 2007, a true and correct copy of the foregoing was provided to a person licensed to make service of process in civil cases for delivery, along with the summons and petition filed in this matter, to the following:

Airgonomics, Inc.
900 East Reno Court
Broken Arrow, OK 74012

Mark A. Wingo
900 East Reno Court
Broken Arrow, OK 74012

