



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the Twenty-Seventh day of June, 2014

Alaska Airlines, Inc.

Docket OST 2014-0001

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 257**

Served: June 27, 2014

CONSENT ORDER

This consent order concerns violations by Alaska Airlines, Inc., (Alaska) when it failed to disclose code-share arrangements as required by 49 U.S.C. § 41712(c) and 14 CFR Part 257 during telephone calls regarding airline reservations. These failures also constitute violations of 49 U.S.C. § 41712(a), the statutory prohibition against unfair and deceptive practices. The order directs Alaska to cease and desist from future violations of Part 257 and section 41712 and assesses \$150,000 in civil penalties.

Applicable Law

Alaska is an air carrier¹ and is therefore subject to the code-share disclosure requirements found in 49 U.S.C. § 41712(c) and 14 CFR 257.5(b). Under section 41712(c), any “ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier” is required to disclose “verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket[,] the name of the air carrier providing the air transportation; and if the flight has more than one segment, the name of each air carrier providing the air transportation for each such flight segment.” With regard to oral communications concerning a flight that is part of a code-sharing arrangement, section 257.5(b) states that a ticket agent or carrier must disclose to prospective consumers before they book the flight the existence of the code-share arrangement, the corporate name of the transporting carrier, and any other name under which the flight is held out to the public. The purpose of the disclosure is to inform consumers of the operating carrier so they have that

¹ 49 U.S.C. § 40102(a)(2) defines an air carrier as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.”

information before making any decisions regarding air transportation. Accordingly, section 41712(c) and section 257.5(b) require that the oral code-share disclosure be provided when an agent first mentions a code-share flight in response to a consumer inquiry, including inquiries that may involve only a request for information.² Violations of section 41712(c) and section 257.5(b)³ constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712(a).

Facts and Conclusion

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a significant lack of compliance by Alaska with section 257.5(b) of the Department's code-share rule and 49 U.S.C. § 41712(c). For a period of time during late 2013, Enforcement Office staff made a number of telephone calls to Alaska and inquired about booking a flight. During these calls, Alaska's reservations agents failed to make the required disclosure regarding code-share arrangements for the flights in question. Specifically, when discussing flights marketed by Alaska, but operated by its sister carrier, Horizon Air, or its regional partner, Skywest Airlines, Alaska's reservation agents only identified the marketing carrier and did not identify the corporate name of the carrier operating the flight or any other name under which the flight was operated. The telephone calls indicated that Alaska generally failed to inform consumers booking flights involving code-share arrangements of the identity of the airline that would actually operate the aircraft on which the consumer would be flying.

Mitigation

In mitigation, Alaska states that transparency and fair treatment of its customers is a top priority. All of the itineraries tested by the Department involved travel on Horizon Air and Skywest Airlines. Alaska believes that the retirement of Horizon Air's independent brand in 2011, and the adoption of the Alaska livery on Horizon and Skywest aircraft, may have caused some Alaska agents confusion about the code-share disclosure obligations under Part 257. Alaska further states that its arrangements with Horizon and Skywest involve few international flights, and customers always check-in with Alaska. Alaska therefore does not believe that its customers were confused by its agents' failures to disclose the code-share arrangements, and is not aware of any customer complaints related to code-share arrangement disclosures.

Alaska further states that, before receiving the Department's letter, it had already taken steps to improve its Call Centers compliance evaluation procedures to ensure that Part 257 compliance was separately tested. Alaska states that a subsequent audit revealed that

² The current text of 14 C.F.R. 257.5(b) states that the oral disclosure must be made "before booking," and 49 U.S.C. § 41712(c)(1) states that the disclosure must be made "prior to the purchase of a ticket." The Department has previously issued guidance indicating that the oral disclosure must be made when flight options are first mentioned, both in the Preamble to the 1999 Final Rule that created Part 257, *see* 64 Fed. Reg. 12838, 12846 (March 15, 1999), and in several consent orders. *See, e.g., FC USA, Inc., d/b/a Liberty Travel*, Order 2013-8-25 (August 29, 2013).

³ 14 CFR 257.4.

customers were advised of Alaska's code-share arrangements before booking, i.e., before payment information was collected. Since receiving the Department's letter, Alaska states that it has retrained its agents on Part 257 compliance, ensuring that code-share disclosures are completed during initial flight selection, i.e., *while agents are first offering flight options*. Alaska also states that it will make technical improvements to its Reservations computer systems intended to improve agent visibility of code-share, and conduct additional training of its Reservations agents and quality control, as necessary, to reinforce with its agents the importance of complying with the Department's code-share disclosure regulations.

Decision

We view seriously the failure of Alaska to disclose code-sharing arrangements as required by 49 U.S.C. § 41712(c) and 14 CFR 257.5(b). Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying that any violation occurred, Alaska agrees to the issuance of this order, to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 257.5(b), and to the assessment of \$150,000 in compromise of potential civil penalties that otherwise might be imposed pursuant to 49 U.S.C. § 46301. We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a strong deterrent to non-compliance with the statute and the Department's code-share disclosure rule.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that by failing to disclose code-sharing arrangements, Alaska Airlines, Inc., violated 14 CFR 257.5(b) and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
3. We order Alaska Airlines, Inc., and all other entities owned or controlled by or under common ownership with Alaska Airlines, Inc., its successors and assignees, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 257.5(b);
4. We assess Alaska Airlines, Inc., \$150,000, in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 above. Of this total penalty amount, \$75,000 shall be due and payable within thirty (30) days of the date of the issuance of this order. The remaining portion of the civil penalty amount, \$75,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Alaska Airlines, Inc., violates this order's cease and desist

Airlines, Inc., may be subject to additional enforcement action for violation of this order; and

5. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay any portion of the penalty as ordered shall subject Alaska Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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