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

Issued by the Department of Transportation
on the 31st day of May, 2001

Air New Zealand, Ltd. Violations of 14 CFR Part 257 and 49 U.S.C 41712

Served May 31, 2001

CONSENT ORDER

This Consent Order results from an investigation by the Department's Office of Aviation Enforcement and Proceedings of the code-share disclosure practices of Air New Zealand, Ltd. ("Air New Zealand"). This investigation was prompted by a recent advertisement by Swain Tours ("Swain"), an agent of Air New Zealand, that violated the Department's code-share disclosure rules (14 CFR Part 257). This order directs Air New Zealand to cease and desist from future violations and to pay compromise civil penalties.

The Department's code-share disclosure rule states that it is an unfair or deceptive practice under 49 U.S.C. 41712 for airlines sharing a single carrier designator code to fail to provide reasonable and timely notice to consumers of such an arrangement. The rule requires that any advertisement by an air carrier or ticket agent of code-share service shall disclose the nature of that service in reasonably sized type and must identify the transporting carrier by corporate name. See, 14 CFR Part 257. With regard to oral communications with potential customers, section 257.5(b) requires that a ticket agent or carrier agent must disclose to a consumer the existence of the code-share arrangement and the corporate name of the transporting carrier before booking the flight. This information must be given to the consumer regardless of whether the consumer makes a reservation.

Swain/Air New Zealand published an advertisement on October 8, 2000, that stated "100% Pure New Zealand Indulgence From $1299." In the advertisement, the Air New Zealand logo is prominently displayed and clearly holds out Swain as an agent of Air New Zealand. The ad lists an airfare from Chicago to Auckland, New Zealand, through Los Angeles but fails to note the corporate name of the carrier providing service from Chicago to Los Angeles which in this case was United Airlines. In this regard, the ad contains only a statement in the fine print that "some services provided by other airlines." Because the code-share carrier is not identified, the advertisement fails to comply with section 257.5(d).

A follow up investigation revealed a continuing significant lack of compliance with the Department's code-share regulation by Air New Zealand and Swain reservation personnel regarding the service noted above. In a recent telephone survey conducted by Department investigators, Air New Zealand personnel did not provide any notice to the caller of the code-share arrangement during 14 of 70 test calls. Seventeen other callers were told of the code-share flight only after they booked a reservation. Overall, Air New Zealand personnel did not comply with the code-share disclosure rule 44 percent of the time. With respect to Swain personnel, in the course of nine calls, three callers were notified of the code-share arrangement only after they had booked the reservation and two callers were never provided the required disclosure during the course of their calls. In sum, Swain Tours personnel did not comply with the code-share disclosure rule more than half of the time. By failing to disclose the code-share arrangement in the oral communications, Air New Zealand violated 14 CFR 257.5(b). Violations of Part 257 are considered an unfair and deceptive practice in violation of 49 U.S.C. 41712.

Disclosure of code share arrangements is essential to ensure proper consumer protection. Of serious concern to us here is the fact that this is the second time we have found Air New Zealand in violation of the Department's code-share regulations. In 1994, Air New Zealand entered into a consent agreement with the Department (Order 94-6-17) under which it agreed to the issuance of an order to cease and desist from violations of the code-share disclosure rule and to the assessment of $10,000 in compromise of civil penalties.

In response to the most recent findings, Air New Zealand states, without admitting any violations, that the alleged failure to provide the proper oral disclosure of code-share flights was inadvertent and was done without any intent to deceive the traveling public. Air New Zealand notes, in fact, that since the previous consent order, it has taken significant steps to ensure its reservation agents are fully aware of, and compliant with, the Department's advertising/code-share disclosure policies. These immediate and comprehensive remedial measures included preparing updated training materials and procedures, conducting monthly internal reviews, and providing frequent written and oral reminder notices in daily briefings. Moreover, after issuance of the Department's code-share disclosure regulations in 1999, Air New Zealand conducted a series of briefings with its entire staff to inform them of the Department's new code-share disclosure rules. These rules also were integrated into Air New Zealand's new-hire training program.

Finally, once Air New Zealand became aware of the Department's most recent investigation and survey results, it immediately took remedial action by reminding all ticket agents and Air New Zealand personnel, in a series of detailed memoranda and oral briefings, of their responsibilities under the Department's regulations. Air New Zealand's reservations supervisors have now been tasked with regularly monitoring calls to ensure that its reservations staff are in compliance with the Department's code-share disclosure rules. All personnel failing to adhere to Air New Zealand's and the Department's policies will face disciplinary action. Air New Zealand desires its agents to have a 100% disclosure rate and is working toward that end. It notes, however, that there has been significant improvement in its disclosure rate since 1994 and believes its current compliance rate is well above industry standards.

With regard to the Swain advertisement, Air New Zealand notes that although Swain acts as Air New Zealand's agent, the advertisement in question was developed and placed by the New Zealand Tourism Board. Air New Zealand's advertising normally does include language that discloses the existence of a code-share relationship, in conformance with the Department's rules, and Air New Zealand makes every effort to review all advertising referencing its flights for compliance with the Department's regulatory standards. Promptly after receiving notice from the Department about the Swain advertisement, Air New Zealand contacted Swain to ensure that all future advertising complies with the Department's rules. In addition, Air New Zealand has written to each of its travel agents and tour operators explaining the Department's advertising regulations and advising that all advertisements must comply with these regulations.

We believe that Air New Zealand's failure to adequately disclose code-share arrangements warrants enforcement action, including a civil penalty payment. In order to avoid litigation, and without admitting or denying the alleged violations, Air New Zealand has agreed to settle this matter with the Department and enter into this consent order to cease and desist from future violations of 14 CFR Part 257 and 49 U.S.C. 41712 . Air New Zealand has also agreed to the assessment of $45,000 in civil penalties in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. 46301. We believe that the assessment of a civil penalty of $45,000 in this instance is warranted in light of the nature and extent of the code-share disclosure violations in question, and in light of the fact that by its conduct Air New Zealand has violated the Department's existing order to cease and desist from such violations. Of this total penalty amount, $22,500 shall be due and payable within 15 days of the issuance of this order. The remaining $22,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Air New Zealand violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. The order and penalty assessed will provide a strong incentive to Air New Zealand and all other carriers and their

agents to ensure that they do not violate our code-share disclosure rule in the future.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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 Air New Zealand, Ltd., has violated 14 CFR Part 257 and Order 94-6-17 by failing to provide adequate disclosure of code-share arrangements to consumers in advertising and in oral communications with potential customers;

3. We find that Air New Zealand, Ltd., in the instances described in paragraph 2, engaged in unfair and deceptive practices in violation of 49 U.S.C. 41712;

4. We order Air New Zealand, Ltd., to cease and desist from the activities described in ordering paragraphs 2 and 3 above;

5. Air New Zealand, Ltd., is assessed $45,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of that penalty amount $22,500 shall be due and payable within 15 days of the service date of this order. The remaining $22,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Air New Zealand, Ltd. violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Air New Zealand, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment shall be made within 15 days of the service date of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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