



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

Issued by the Department of Transportation  
on the 24th day of October 2005

**BlueStarJets, LLC**

**Violations of 49 U.S.C. §§ 41101 and 41712  
and 14 CFR 399.80**

**Docket OST 2005-20077**

**Served October 24, 2005**

**CONSENT ORDER**

This consent order concerns violations by BlueStarJets, LLC, (BlueStar) of the Department's aviation licensing requirement, 49 U.S.C. § 41101, and regulatory and statutory prohibitions against ticket agents engaging in unfair and deceptive trade practices and unfair methods of competition found in 14 CFR 399.80 and 49 U.S.C. § 41712. These violations are the result of BlueStar having held out common carriage air service without the requisite economic authority from the Department and having misrepresented the quality of service and safety record of companies with which it arranged air transportation services. This order directs BlueStar to cease and desist from such further violations and assesses the company a compromise civil penalty of \$100,000.

In addition to applicable FAA requirements, in order to engage directly or indirectly in air transportation, citizens of the United States<sup>1</sup> must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. §§ 41101 and 41102, or in the form of an exemption from the certificate requirement, such as those applicable to direct air carriers<sup>2</sup> operating as air

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<sup>1</sup> A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

<sup>2</sup> An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a "direct air carrier."

taxis under 14 CFR Part 298 and indirect air carriers<sup>3</sup> functioning as public charter operators pursuant to 14 CFR Part 380 or air freight forwarders under 14 CFR Part 296. From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation.<sup>4</sup> Engaging in air transportation without economic authority, in addition to violating section 41101, constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Persons or entities, including air charter brokers, that do not have Departmental economic authority may not, as principals, enter into contracts with direct air carriers for air transportation and then re-sell that air transportation pursuant to separate contracts with charter customers. Selling or re-selling air transportation without economic authority violates the certificate requirement in 49 U.S.C. § 41101. Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(2), air charter brokers, even if they act ultimately as agents of direct air carriers or agents of charter customers, may not, among other things, at any time create the false impression that they are direct air carriers. Nor may they misrepresent the quality of the air transportation offered to the public or the safety record or certification of the direct air carriers that provide that transportation. Such misrepresentations violate 14 CFR 399.80(a), (c), and (d) and, like violations of section 41101, are considered by the Department to be unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

BlueStar is an air charter broker that does not hold economic authority from the Department. As an air charter broker, BlueStar maintains that it arranges air transportation for its customers after obtaining their consent to act as their agent.<sup>5</sup> While such consent, as a general matter, may have been obtained by BlueStar in the course of its business, an investigation by the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office) shows that BlueStar clearly held itself out via other means as a direct air carrier in violation of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). For example, its website referred to “BlueStarJets’ aircraft” and identified certain types of aircraft as being in “our fleet” despite the Enforcement Office’s notice

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<sup>3</sup> An entity or person who is not a direct air carrier, but who solicits in his or her own right members of the public to purchase air transportation is an “indirect air carrier.” See, e.g., *Bratton v. Shiffrin*, 635 F.2 1228 (7th Cir. 1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

<sup>4</sup> Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

<sup>5</sup> Obtaining authorization from the customer to act on the customer’s behalf as its agent in signing a contract for air transportation is one of the lawful means of conducting business as an air charter broker. *Notice on the Role of Air Charter Brokers in Arranging Air Transportation*, 69 Fed. Reg. 61429, Oct. 18, 2004, *erratum* published 69 Fed. Reg. 62321, Oct. 25, 2004.

cautioning against the use of these and other misleading phrases and terms.<sup>6</sup> Additionally, in at least one instance, BlueStar representatives gave business cards to a direct air carrier that read “BlueStarJets–Any Jet–Any Time–Any Place” and that identified the bearer as being a member of BlueStar’s “flight crew.” BlueStar representatives then allegedly instructed the direct air carrier to give these cards to passengers on flights operated by the direct air carrier and arranged by BlueStar in lieu of the direct air carrier’s own business cards.

As stated above, BlueStar asserts that it arranged air transportation for its customers while acting within the scope of valid principal-agent relationships, which assertion is supported by documents provided by BlueStar. However, in performing its duties as an agent, BlueStar failed to exercise due diligence in contracting for charter air service on behalf of its customers on numerous occasions with a company, Platinum Jet Management, Inc., (Platinum) that had no authority to operate as an air carrier. BlueStar’s failure to ensure the use of properly licensed air carriers was particularly troublesome since it explicitly promised on its Internet website to arrange charter services on behalf of its clients on “third party certified air carriers operating under Part 135 of the Federal Aviation Administration (FAA) Regulations.” BlueStar also assured potential customers that it “select[ed] only those [direct air carriers] that [met] the high standards set by [certain] independent auditors... .” However, shortly after a Platinum-operated Challenger aircraft crashed at Teterboro, New Jersey, on February 2, 2005, while carrying a BlueStar customer, it became apparent that neither of the above statements was true with respect to Platinum specifically and that BlueStar, at the time, did not have sufficient procedures in place upon which those statements, as a general matter, could credibly be based.<sup>7</sup> Therefore, those statements constituted an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712 and 14 CFR 399.80(c) and (d).<sup>8</sup>

In mitigation, BlueStar states that it was in possession of documentation that led BlueStar to reasonably believe that Platinum held the appropriate authority to perform Part 135 charter flights. Further, BlueStar points out that it has implemented corrective measures at considerable cost to prevent a recurrence of the problems at issue here. Specifically, BlueStar has engaged Wyvern Consulting, Ltd., a provider of aviation safety consultancy services, to administer a safety program designed to ensure that BlueStar’s clients are transported only by duly licensed air carriers. Finally, BlueStar points out that the company has cooperated fully with the Enforcement Office’s investigation of this matter.

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<sup>6</sup> See note 5, *supra*. We note that the website did include a disclosure that BlueStar was an air charter broker and not a direct air carrier. However, the effect of the misleading language on the website was not negated by the disclosure, which was relegated to an easily overlooked footnote on a secondary page within the website.

<sup>7</sup> While this order closes the Enforcement Office’s investigation of BlueStar, Platinum’s conduct remains the subject of a separate investigation.

<sup>8</sup> Importantly, even in the absence of an explicit promise to use only properly licensed carriers, a broker’s use of a company that lacked proper air carrier authority could be an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

The Enforcement Office has carefully considered all of the information available to it, including that provided by BlueStar, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and BlueStar have reached a settlement of this matter. Without admitting or denying the violations described above, BlueStar agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80 and to the assessment of \$100,000 in compromise of potential civil penalties otherwise assessable. Of this amount, \$50,000 shall be paid under the terms described below. The remaining \$50,000 shall be suspended for 12 months following the service date of this order and then forgiven unless BlueStar violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and BlueStar may be subject to additional enforcement action. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by BlueStar and other air charter brokers or other ticket agents that hold themselves out as providing for or arranging air transportation.

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 the order as being in the public interest;
2. We find that BlueStarJets, LLC, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that BlueStarJets, LLC, violated 14 CFR 399.80(a), (c), and (d), as described above, by misrepresenting itself as an air carrier and by misrepresenting the quality of the air transportation that it offered to the public and the safety records and certification of the direct air carriers that it procured to provide that transportation;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, BlueStarJets, LLC, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order BlueStarJets, LLC, and all other entities owned and controlled by or under common ownership and control with BlueStarJets, LLC, and their successors and assignees to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a), (c), and (d);

6. We assess BlueStarJets, LLC, a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$50,000 shall be due and payable 30 days after the service date of this order. The remaining \$50,000 shall be suspended for 12 months after the service date of this order and then forgiven, unless, during this time, BlueStarJets, LLC, violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and BlueStarJets, LLC, may be subject to additional enforcement action. Failure to pay the penalty as ordered shall subject BlueStarJets, LLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

7. We order BlueStarJets, LLC, to make the payment set forth in ordering paragraph 6, above, 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 initiative.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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