



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

**Issued by the Department of Transportation
On the Thirtieth day of August, 2013**

United Airlines, Inc.

Docket OST 2013-0004

**Violations of 14 CFR Parts 234, 250, 259, and
374, and 49 U.S.C. §§ 41708, 41712, and 41721**

Served August 30, 2013

CONSENT ORDER

This consent order concerns the failure of United Airlines, Inc., (United) to timely process consumer refund requests, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 226 (Regulation Z), and the related implementing requirement in 14 CFR Part 374. This consent order also addresses United's failure to file accurate mishandled-baggage reports as required by 14 CFR 234.6 and oversales data as required by 14 CFR 250.10, as well as United's failure to file in a timely manner reports of incidents involving animals during air transport as required by 14 CFR 234.13. Failure to comply with the reporting requirements in sections 234.6 and 250.10 also constitute violations of 49 U.S.C. § 41708. Violations of 14 CFR 234.13 also constitute violations of 49 U.S.C. § 41721. Additionally, violations of Part 234, Part 250, Part 259, and Part 374, as well as 49 U.S.C. §§ 41708 and 41721, are unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs United to cease and desist from future similar violations and assesses a compromise civil penalty of \$350,000 in connection with the refunding violations.

Refund Requests Involving Airline Tickets

Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 226 (Regulation Z) and the related Department of Transportation (Department) implementing rule, 14 CFR Part 374, establishes that, with respect to refund requests involving airline tickets purchased with a credit card, a creditor—here United—must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receipt of full documentation for the refund requested. In addition, through its enforcement case precedent, the Department requires that, with respect to tickets purchased with cash or similar forms of payment, an airline must provide a refund within 20 business days of receipt of full documentation of

such a request.¹ Furthermore, pursuant to 14 CFR 259.5, a covered carrier must adopt and adhere to a customer service plan that includes a commitment to provide prompt refunds when ticket refunds are due. Failure to process a refund within the stipulated time periods violates section 259.5 and Part 374 and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

During an on-site regulatory compliance inspection at United's Chicago headquarters in August 2012, the Office of Aviation Enforcement and Proceedings (Enforcement Office) found substantial evidence indicating noncompliance with 14 CFR 259.5 and 14 CFR Part 374 by the carrier. Specifically, between March and May 2012, United failed to process over 9,000 refund requests in a timely manner. By failing to timely process refunds for air transportation, as required by Regulation Z and the Department's enforcement case precedent, United violated 14 CFR Part 374 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Furthermore, pursuant to 14 CFR 259.5, United adopted a customer commitment and made it available on its website, www.united.com. In its customer commitment, United pledged that for purchases made with a credit card, it would submit the refund requests to the credit card issuer within seven business days of receiving a complete request for refund, and for purchases made with cash, check, or other forms of payment, it would issue the refund within 20 business days of receipt of the completed refund request. United's failure to adhere to this commitment violates 14 CFR 259.5(b)(5) and Part 374 and 49 U.S.C. § 41712.

Reporting Requirements

14 CFR 234.6 requires reporting carriers² to report monthly with the Department on a domestic system basis the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. 14 CFR 234.13 requires any air carriers that provide scheduled passenger air transportation to submit a report to the Aviation Consumer Protection Division on any incidents involving the loss, injury, or death of an animal during air transportation within 15 days of the end of the month during which the incident occurred. 14 CFR 250.10 requires reporting carriers to file quarterly reports with the Department's Bureau of Transportation Statistics (BTS) listing, *inter alia*, the number of passengers denied boarding involuntarily and the number of passengers who volunteered to give up their seats. These numbers are then published and made available to the public in the Department's monthly Air Travel Consumer Report (ATCR), which ranks carriers according to their rate of mishandled-baggage reports per

¹ See *Northwest Airlines, Inc.*, Order 87-11-33 (November 16, 1987).

² Reporting carrier means an air carrier certificated under 49 U.S.C. § 41102 that accounted for at least one percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year. 14 CFR 234.2.

1,000 passengers³ and their rate of involuntarily denied boardings.⁴ ATCR data are used by members of the traveling public when choosing among transportation options and by carriers as a basis for advertising materials regarding the quality of their service compared to other carriers. Therefore, it is imperative that the ATCR data be accurate. Violations of sections 234.6 and 250.10 also constitute violations of 49 U.S.C. § 41708, which authorizes the Department to require airlines to file reports in the form prescribed by the Department, and violations of section 234.13 also constitute violations of 49 U.S.C. § 41721. Violations of sections 234.6, 234.13, and 250.10 constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

United disclosed to the Department that in 2011, it filed inaccurate mishandled baggage and oversales reports. Specifically, with respect to the mishandled baggage reports, United explained that between January and October 2011, it underreported the number of mishandled baggage claims it received from passengers. Regarding the oversales reports, United revealed that in each quarter of 2011, it underreported the number of passengers who were voluntarily and involuntarily denied boarding on oversold flights and the total number of enplanements. As a result, United's rankings in both areas in the ATCR were inflated. By filing with the Department inaccurate mishandled-baggage and oversales reports, United violated 14 CFR 234.6, 14 CFR 250.10, and 49 U.S.C. §§ 41708 and 41712.

Additionally, in 2012 and 2013, United failed to submit a number of the reports of incidents involving animals during air transport in a timely manner. By failing to timely file reports on incidents involving the loss, injury, or death of an animal during air transportation, United violated 14 CFR 234.13 and 49 U.S.C. §§ 41712 and 41721.

We note that United, on its own initiative, divulged its reporting errors to the Department, and took proactive measures to correct the reports and, in the case of the animals incident reports, to ensure timely reporting in the future. Accordingly, although the carrier is directed by this order to cease and desist from future similar violations, no civil penalty is assessed for the reporting violations discussed above.

Mitigation

In mitigation, United states that it takes seriously its compliance obligations under Regulation Z and has dedicated the necessary resources for compliance. United explains that the former United Air Lines, Inc., ("UAL") and the former Continental Airlines, Inc., ("CAL") transitioned to a single passenger service system, on March 3, 2012. United

³ A carrier's rate of mishandled baggage is based on the total number of reports each carrier received from passengers concerning lost, damaged, delayed, or pilfered baggage and its domestic passenger enplanements over that period. *Air Travel Consumer Report*, available at <http://www.dot.gov/airconsumer>.

⁴ A carrier's rate of involuntary denied boarding is computed using its total quarterly number of involuntary denied boardings and its passenger enplanements over that period. *Air Travel Consumer Report*, available at <http://www.dot.gov/airconsumer>.

further explains that this process required that all flights of UAL and CAL be marketed under a single airline designator code, that all reservations be housed in a single reservation system necessitating the migration of all UAL ticket transactions to that system, and that a single revenue accounting system be created. United notes that this migration was the largest undertaking of its kind in the history of the airline industry.

United states that in connection with this process, it experienced an unanticipated back-log and a substantial increase in the number of refund requests, managed by employees working with new systems and resulting in some unforeseeable anomalies that caused a temporary inability to process refunds in a timely manner.

The carrier states that to address the refund back-log and the increased number of refund requests, United invested significantly in overtime, temporary, and contract labor, providing extensive training on the joint accounting systems. United states further that it also implemented, on a temporary basis, a more expedited process of validating and approving certain refund claims to help to speed their processing.

Decision

The Enforcement Office has carefully considered the information provided by United, but continues to believe that enforcement action is warranted. The Enforcement Office and United have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, United consents to the issuance of this order to cease and desist from future similar violations of 14 CFR 234.6, 14 CFR 234.13, 14 CFR 250.10, 14 CFR 259.5(b)(5), 14 CFR Part 374, and 49 U.S.C. §§ 41708, 41712, and 41721, and to the assessment of \$350,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and the size and sophistication of the carrier, and serves the public interest. It represents a strong deterrent to future similar unlawful practices by United and other carriers.

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 United Airlines, Inc., violated 14 CFR Part 374 by failing to timely process refunds for air transportation purchased with credit cards, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 226;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, and by failing to process refunds for air transportation paid for with cash or similar forms of payment within 20 days of receipt of complete documentation for such refunds, United Airlines, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, United Airlines, Inc., failed to adhere to its Customer Commitment in violation of 14 CFR 259.5(b)(5) and 49 U.S.C. § 41712;
5. We find that United Airlines, Inc., violated 14 CFR 234.6 by failing to submit accurate mishandled-baggage reports;
6. We find that United Airlines, Inc., violated 14 CFR 234.13 by failing to file reports of incidents involving animals during air transport in a timely manner;
7. We find that United Airlines, Inc., violated 14 CFR 250.10 by failing to submit accurate reports of the number of passengers who were voluntarily and involuntarily denied boarding;
8. We find that, by engaging in the conduct described in ordering paragraphs 5 through 7, above, United Airlines, Inc., violated 49 U.S.C. §§ 41708, 41712, and 41721;
9. We order United Airlines, Inc., its successors, its affiliates, its assigns, and all other entities owned by, controlled by, or under common ownership and control with United Airlines, Inc., its successors, its affiliates, and its assigns to cease and desist from further violations of 14 CFR 234.6, 14 CFR 234.13, 14 CFR 250.10, 14 CFR 259.5(b)(5), 14 CFR Part 374, and 49 U.S.C. §§ 41708, 41712, and 41721;
10. We assess United Airlines, Inc., a compromise civil penalty of \$350,000 in lieu of civil penalties that might otherwise be assessed for the refund-related violations covered in ordering paragraphs 2 through 4, above. Of this total penalty amount, \$175,000 shall be due and payable within thirty (30) days of the date of this issuance of this order. The remaining portion of the civil penalty amount, \$175,000, shall become due and payable immediately if, within one year of the date of issuance of this order, United Airlines, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case United Airlines, Inc., may be subject to additional enforcement action for violation of this order; and
11. We order United Airlines, Inc., to pay the penalty assessed in ordering paragraph 10, above, through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject United Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt

Collection Act and to further enforcement action for failing to comply with 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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