



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

Issued by the Department of Transportation
on the 20th day of September 2021

Paradigm Air Operators, Inc.,

Docket OST 2021-0025

Violations of 49 U.S.C. §§ 41101 and 41712

Served September 20, 2021

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. §§ 41101 and 41712 by Paradigm Air Operators, Inc., (Paradigm) for engaging in air transportation without the required economic authority from the Department of Transportation (the Department). This order directs Paradigm to cease and desist from such further violations and assesses a compromise civil penalty of \$40,000.

Applicable Law

In addition to complying with applicable Federal Aviation Administration (FAA) safety-related requirements, in order to engage directly or indirectly in air transportation, a citizen of the United States¹ is required to hold economic authority² from the Department pursuant

¹ A “citizen of the United States” includes a corporation organized in the United States that 1) meets certain specified numerical 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).

² The Department grants economic authority to large aircraft operators (i.e., operators of aircraft, such as the Boeing 757 and 737 aircraft operated by Paradigm, that were originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds) in the form of a certificate of public convenience and necessity issued under 49 U.S.C. § 41102. Before granting economic authority, the Department must find a carrier to be “fit,” which entails a determination that the carrier is owned and controlled by U.S. citizens and has adequate financial resources, a competent management team, and a positive compliance disposition. This fitness requirement is a continuing one and the Department monitors “certificated” carriers to ensure their compliance. Certificated carriers must also meet certain Departmental economic rules, such as liability insurance requirements (14 CFR Part 205) and, under certain circumstances, escrow requirements to protect charterers’ funds and expectations (14 CFR 212.8 and 380.34). Large aircraft operators that engage in common carriage without the appropriate DOT and FAA authorizations harm consumers by denying them the level of protection afforded by duly licensed carriers that have been found fit by the Department and are complying with the proper FAA safety

to 49 U.S.C. § 41101, or an exemption from that provision. “Air transportation” includes the transportation of passengers or property by aircraft as a common carrier for compensation between two places in the United States or between a place in the United States and a place outside of the United States.³ Common carriage, in the context of air service, consists of the provision or holding out of transportation by air to the public for compensation or hire.⁴ From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of that service, constitutes “engaging” in air transportation.⁵ A holding out can occur in various ways, such as by direct means⁶ or by indirect means⁷. Whether air service is or has been “held out” is determined by an objective analysis of the carrier’s conduct, rather than by the carrier’s characterization of the nature of its operations or by any motive the carrier ascribes to its operations. Through enforcement case precedent, the Department’s Office of Aviation Consumer Protection (OACP)⁸ has found that violations of section 41101 also constitute unfair methods of competition in violation of 49 U.S.C. § 41712.⁹

regulations. In addition, such operators, whose regulatory compliance costs are lower, place duly licensed common carriers at a competitive disadvantage.

³ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

⁴ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, at 523 (5th Cir. 1993).

⁵ 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.

⁶ E.g., *Airmark Aviation, Inc., Violations of 49 U.S.C. § 1371*, Order 92-2-14 (Feb. 11, 1992) (carrier obtained charter customers through a sales presentation given by the carrier’s president).

⁷ E.g., *Contract Air Cargo, Inc., Violations of 49 U.S.C. § 41101 and 41712*, Order 2005-3-39 (Mar. 30, 2005) (unlicensed air carrier *inter alia* performed sub-service for direct air carriers that were licensed to engage in air transportation and transported the cargo of an air freight forwarder that was authorized to engage indirectly in air transportation pursuant to 14 CFR Part 296); *IDM Corporate Aviation Services, LLC, Violations of 49 U.S.C. § 41101 and 41712*, Order 2007-2-6 (Feb. 5, 2007) (aircraft operator under 14 CFR Part 125 provided lift to customers obtained by an air charter broker acting as the carrier’s agent).

⁸ The office is formerly known as the Office of Aviation Enforcement and Proceedings.

⁹ E.g., *Principal Air Services, LLC, and David C. Bernstein, Violations of 49 U.S.C. § 41101 and 41712*, Order 2006-7-13 (Jul. 11, 2006). It is OACP’s view that the charter air transportation service proposed or provided by Paradigm (i.e. single-entity charter transport for professional sports teams) is the type of service that numerous duly authorized air carriers routinely carry out. As such, the conduct by Paradigm to engage in air transportation constitutes an unfair method of competition in violation of section 41712.

Background

At all times relevant to this matter, Paradigm is a citizen of the United States incorporated in Delaware that operated several Boeing 757 and 737 aircraft pursuant to 14 CFR Part 125, an FAA rule applicable to private carriage operations with large aircraft. Paradigm has never held economic authority from the Department. However, records obtained by OACP indicate that Paradigm has engaged in direct holding out of air transportation by conducting revenue “demonstration” flights for various customers. Through these “demonstration” flights, Paradigm obtained new business by providing potential customers a first-hand experience of its service.¹⁰ In numerous occasions, Paradigm also engaged in indirect holding out of air transportation by soliciting charter business through air charter brokers. As such, Paradigm’s conduct violates 49 U.S.C. §§ 41101 and 41712.¹¹

Response

In its defense, Paradigm states that it has always endeavored to be compliant with all regulations governing its Part 125 operations, including seeking guidance from FAA and DOT’s Office of the Secretary. Paradigm asserts that it has always reasonably believed that it met or exceeded those regulatory obligations and that its operations were thus in accord with the authority granted to private carriage for hire pursuant to the jurisdiction of both agencies. Paradigm states that it has worked diligently not to hold out, directly or indirectly. In this regard, Paradigm states that it has no public website, it uses no brochures, business cards, or other marketing materials, did not employ a broker or other agent, and has no livery on its aircraft. Moreover, Paradigm believes that in the limited instances in which a broker was involved, the broker represented an ultimate customer and Paradigm believed that the broker’s contact with Paradigm was consistent with OACP precedent permitting a broker’s involvement. Finally, Paradigm states that it believed that providing occasional demonstration flights for customers interested in signing long-term, multimillion-dollar contracts was an acceptable practice, but now understands OACP’s position to the contrary.

Although Paradigm denies that its conduct amounted to an improper holding out, Paradigm states that after becoming aware of OACP’s concerns about its operations, it cooperated fully with that office’s inquiry and immediately took steps to modify and bolster its practices to discontinue the conduct that was of concern to OACP to assure that office of

¹⁰ In a letter responding to OACP’s investigation, Paradigm admits that it provided demonstration flights to give potential long-term customers a first-hand experience of its services. As such, it is OACP’s position that the operation of these demonstration flights constitutes a type of promotional activity that constitutes holding out to the public.

¹¹ On November 30, 2020, the FAA issued an emergency order revoking the operating certificate of Paradigm for conducting numerous unauthorized charter flights in common carriage between 2013 and 2018. The FAA further alleged that on numerous occasions, Paradigm advertised or otherwise offered charter flights that did not take place. Upon Paradigm’s appeal of the FAA’s order with the National Transportation Safety Board (NTSB), a hearing was conducted in December 2020, and an NTSB Administrative Law Judge (ALJ) affirmed the FAA’s Emergency Order of Revocation on January 7-8, 2021. Paradigm filed an administrative appeal of the ALJ’s decision but later withdrew that appeal. Accordingly, the Emergency Order is final.

its compliance with Department requirements. Paradigm believes that in light of the circumstances here, in particular the mitigating circumstances noted above, including the fact that the FAA's separate but related action has resulted in the revocation of Paradigm's Part 125 certificate, it views this enforcement action by OACP to be unfair and unwarranted. In particular, Paradigm notes that, despite positive corrective steps it asserts it took in response to OACP's review of its operations, it was more than three years after the OACP began its investigation of Paradigm that the FAA, which is part of the DOT, acted to revoke Paradigm's authority, based in part on information stemming from OACP's investigation.¹²

Decision

OACP has carefully considered all of the information available to it and continues to believe that enforcement action is warranted. In order to avoid litigation, OACP and Paradigm have agreed to settle this matter. Without admitting the violations described above, Paradigm agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712, and to the assessment of \$40,000 in compromise of potential civil penalties otherwise assessable against it. 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 Paradigm and other similarly situated persons and entities.

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 the order as being in the public interest;
2. We find that Paradigm Air Operators, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that, by engaging in the conduct described in paragraph 2, above, Paradigm Air Operators, Inc., engaged in unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Paradigm Air Operators, Inc., and all other entities owned and controlled by, Paradigm Air Operators Inc., and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712;

¹² It is OACP's position that its investigation of Paradigm is based on its jurisdiction over aviation economic licensing statutes and regulations and is independent of the FAA's investigation, which is based on aviation safety statutes and regulations. Both OACP and FAA separately concluded that Paradigm engaged in common carriage, for which the applicable FAA safety authority for air carriers and DOT economic authority are required. Similar to the FAA's position, OACP views Paradigm's conduct of engaging in common carriage without appropriate authorities to be serious.

5. We assess Paradigm Air Operators, Inc., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total amount, \$20,000 shall be due and payable in seven installments, with the first installment of \$5,000 due and payable within 30 days of the issuance date of this order, and the remaining six installments of \$2,500 each due and payable on the 15th day of each calendar month following the first installment payment. The remaining \$20,000 shall become due and payable if, within one year of the service date of this order Paradigm Air Operators, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Paradigm Air Operators, Inc., may be subject to additional enforcement action for failure to comply with this order; and

6. We order Paradigm Air Operators, Inc., to pay the penalty assessed in ordering paragraph 5 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 Paradigm Air Operators, 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 initiative.

BY:

BLANE A. WORKIE
Assistant General Counsel for
Office of Aviation Consumer Protection

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