



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

Issued by the Department of Transportation  
on the 10th day of October, 2002

**Sky King, Inc.**

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

**Docket OST 2002-12273**

**Served October 10, 2002**

**CONSENT ORDER**

This consent order concerns unauthorized service by Sky King, Inc., which performed operations as a common carrier without the requisite economic authority from the Department. Sky King is an operator of commercial services with large aircraft operated under 14 CFR Part 125. Authority under this Federal Aviation Administration (FAA) regulation, however, is strictly limited to private carriage operations. In commercial operations with large aircraft which are offered to the general public, by contrast, a carrier would be operating in common carriage, and must hold economic authority from the Department under 49 U.S.C. § 41101. Although Sky King holds certificates from the Department, the authority under those certificates has not become effective. It has nonetheless performed significant common carriage service since 1999. The unauthorized service as a common carrier, in addition to violating the certificate requirements of Title 49, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Sky King has provided service as a Part 125 carrier since May 1991. In 1993, Sky King sought and obtained a certificate from the Department to engage in interstate charter passenger operations (*see* Order 93-11-30) but never received the requisite Part 121 operating authority from the FAA to have the economic authority made effective. This certificate was revoked for reason of dormancy in July 1995 (*see* Order 95-7-32). In 1998, Sky King again sought and received certificates from the Department to engage in interstate and foreign charter operations (*see* Orders 98-3-26 and 98-4-14). Sky King has been working since that time to meet the conditions to make those certificates effective, most notably, obtaining a Part 121 Air Carrier Certificate from the FAA.

During 1999 and 2000, Sky King operated with a fleet consisting of two aircraft. Since 2001, it has operated five aircraft. A majority of Sky King's service was pursuant to

contracts with up to 14 professional sports teams in the National Hockey League and National Basketball Association. Service ranged from single flights to operations over an entire professional sports season of several months. In addition, it provided service on an ad-hoc basis to several civic groups, media organizations covering sporting events, and groups in the music entertainment industry. Sky King also provided service on a substitute basis for common carriers. Such service on behalf of a common carrier is itself common carriage.

Common carriage, in the context of air service, consists of the holding out or provision of air transportation to the general public for compensation or hire. The primary issue in this case, as in most disputes regarding the distinction between common and private carriage, is whether the carrier is "holding out" or providing service to the public.<sup>1</sup> Although Sky King apparently did not engage in any direct advertising of its services to the general public, it has engaged in common carriage by availing itself of the services of various "aviation consultants" and brokers who solicited business for it, and by operating under contracts for an air carrier which held out air service to the public. In so doing, it gained a reputation for a willingness to provide transportation by air to at least a class or segment of the public while operating without an effective certificate issued under 49 U.S.C. § 41101. The Office of Aviation Enforcement and Proceedings (AEP), therefore, believes that Sky King has engaged in common carriage without appropriate economic authority. Holding out service without requisite authority is also an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712.

In mitigation, Sky King states that it cooperated fully in the informal investigation conducted by AEP, and in its defense submitted evidence to support its position that under relevant DOT and FAA precedent and current industry practice, sports teams may lawfully contract with Part 125 carriers. Upon becoming aware of AEP's concerns, Sky King severely curtailed the scope of flight services provided on an ad hoc basis and ceased all revenue flight operations at the close of this past sports season, and thus no revenues have been generated for close to a three month period. According to Sky King, its good faith efforts to obtain DOT and FAA authority to engage in common carriage, which extended over a number of years, were complicated by significant changes in FAA certification procedures. Sky King submits that these costs of compliance, which easily exceed several million dollars, should be taken into consideration to mitigate any civil penalty assessment.

We view seriously Sky King violations of the Department's licensing requirements. We have carefully considered the facts of this case, including the company's explanation, and continue to believe enforcement action is necessary. Sky King, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 by engaging in common carriage directly or indirectly, and to an assessment of \$100,000 in

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<sup>1</sup> See, *Las Vegas Hacienda, Inc., v. Civil Aeronautics Board*, 298 F.2d 430, 434 (9th Cir. 1962); *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 CAB 583, 601 (1965); *Airmark Aviation, Inc., Violations of 49 U.S.C. § 1372*, Order 92-2-14 (1992); and *Viscount Air Services, Inc., Violations of Sections 401 and 411 of the Federal Aviation Act and 14 CFR 201.6*, Order 92-8-26 (1992).

compromise of potential civil penalties. Of this penalty amount, \$50,000 shall be paid according to the schedule set out in the ordering paragraphs *infra*; the remaining \$50,000 shall be suspended for one year following the service date of this order, and then forgiven unless the carrier violates the order's cease and desist provision within that period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$100,000 penalty shall become due and payable immediately, and Sky King may be subject to further enforcement action.<sup>2</sup> This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future air transportation operations without appropriate economic authority by Sky King as well as other companies.

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 Sky King, 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, Sky King, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Sky King, Inc., is ordered to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712;
5. Sky King, Inc., is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of that penalty amount, \$50,000 shall be due and payable according to the following schedule: an initial payment of \$10,000 shall be due within 30 days of the service date of this order; two additional payments of \$20,000 each shall be due at one month intervals, with the first such payment due 60 days after the service date of the order, and the second 90 days after the service date. The remaining \$50,000 shall be suspended for one year following service of this order, and then forgiven, unless Sky King, Inc. violates this order's cease and desist provisions within the suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$100,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; and

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<sup>2</sup> In light of the issuance of this consent order and the company's cooperation in this investigation, AEP has advised the Office of Aviation and International Affairs that it has positively resolved its concerns regarding Sky King's compliance disposition.

6. Payments shall be made 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. Failure to pay the penalty as ordered shall also subject Sky King, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure 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:**

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

**(SEAL)**

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(1) To 021030004	(2) Type		
(3) From		(4) Ref.	(5) Amount
(6) Ordering Bank and Related Data			
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1. Treasury Department Code—Provided
2. Type Code—To be provided by sending bank.
3. Sending Bank's Code—(ABA#)
4. Reference No.—Optional number, entered if sending bank desires to number transaction.
5. Amount—Include dollar sign and punctuation including cents digits.
6. Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.
- 7/8. Entire line provided precisely as shown.
9. Entire line provided precisely as shown.
10. Enter name of air carrier or other payor (as shown on order).
11. Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."

**NOTE:** Questions about these instructions should be directed to Ms. Betty Barber, Office of Financial and Budget, General Accounting Branch, AMZ-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125, phone: (405) 954-1194, fax: (405) 954-3930. To ensure proper credit, notify Ms. Barber when each payment is made.