

Posted: June 17, 2003
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Order 2003-6-24



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

Issued by the Department of Transportation
on the **17th day of June, 2003**

**Flight-Ops International, Inc., d/b/a
SkyXpress Airline**

Served June 17, 2003

**Violations of 49 U.S.C. §§ 41301 and 41712
and 14 CFR Part 294**

OST 2003-14194

CONSENT ORDER

This order concerns unauthorized air service by Flight-Ops International, Inc., d/b/a SkyXpress Airline (Flight-Ops), between Canada and the United States that violates 49 U.S.C. §§ 41301 and 41712 and 14 CFR 294.31. This consent order directs Flight-Ops to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty.

Since November 2002, Flight-Ops, a Canadian charter air taxi operator registered pursuant to 14 CFR Part 294 of the Department's regulations, has specialized in air service between Kalispell, Montana, and Calgary, Alberta. Foreign carriers operating under Part 294 are limited to charter operations. In May 2003, Flight-Ops filed an application with the Department to conduct scheduled service to and from the United States. However, prior to the final disposition of its application for scheduled authority, Flight-Ops held out via its Internet website and operated a number of flights pursuant to a published schedule between Kalispell and Calgary in violation of 49 U.S.C. § 41301, which requires that foreign air carriers obtain permit authority from the Department *prior* to commencing scheduled service to the United States. Moreover, Flight-Ops held out and operated such service under an unregistered business name, SkyXpress Airline, in contravention of the requirements of 14 CFR 294.31. Any violation of 14 CFR 294.31 or 49 U.S.C. § 41301 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Flight-Ops states that it believed that it was operating within the scope of its economic authority under 14 CFR Part 294. Any operations outside the scope of this

authority, it asserts, were inadvertent on its part. Further, Flight-Ops emphasizes that, with the exception of the carrier's Internet website, the flights in question were not available to the public through any electronic media, such as computer reservations systems or the on-line Official Airline Guide. Furthermore, Flight-Ops proffers that the flights in question were not advertised in any printed media.

With respect to the alleged violation of 14 CFR 294.31, Flight-Ops understands that the use of the business name SkyXpress Airline may have caused confusion to the general public. However, the Flight-Ops states that the language "owned and operated by Flight-Ops International Inc." appeared prominently and proximately to any public usage of the name SkyXpress Airline, thereby minimizing any possible misunderstandings on the part of consumers regarding the carrier with whom they were dealing.

The Enforcement Office has carefully considered all of the information provided by Flight-Ops, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Flight-Ops have reached a settlement of this matter. Without admitting or denying the violations described above, Flight-Ops consents to the issuance of this order to cease and desist from future violations of 14 CFR 294.31 and 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$8,000 (USD) in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$4,000 shall be paid under the terms described below. The remaining \$4,000 shall be suspended for one year following the issuance of this consent order, and then forgiven, unless, during this time period, Flight-Ops violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Flight-Ops may be subject to further and more stringent enforcement action. The Enforcement Office believes this compromise is appropriate and serves the public interest and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41301 and 41712.

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 Flight-Ops International, Inc., violated 49 U.S.C. § 41301 by commencing scheduled air service to and from the United States prior to obtaining permit authority from the Department;
3. We find that Flight-Ops International, Inc., violated 14 CFR 294.31 by holding out and operating air service to and from the United States using an unregistered business name;
4. We find that, by engaging in the conduct and violations described in paragraphs 2 and 3 above, Flight-Ops International, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
5. Flight-Ops International, Inc., and all other entities owned and controlled by, or under common ownership and control with Flight-Ops International, Inc., and their successors and

assignees, are ordered to cease and desist from future violations of 14 CFR 294.31 and 49 U.S.C. §§ 41301 and 41712;

6. Flight-Ops International, Inc., is assessed a civil penalty of \$8,000 (USD) in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2, 3, and 4 above. Of the assessed penalty, \$4,000 shall become due and payable as follows: \$1,000 shall become due and payable within 30 days of the date of issuance of this order; \$1,000 shall become due and payable on August 15, 2003; \$1,000 shall become due and payable on September 15, 2003; and \$1,000 shall become due and payable on October 15, 2003. The remaining \$4,000 shall be suspended for one year following the date of issuance of this consent order, and then forgiven, unless, during this time period, Flight-Ops violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Flight-Ops International, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and

7. Payment of the civil penalty described above shall be made by wire transfers through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the attached instructions.

This order will become a final order of the Department 10 days after its service 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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