



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

Issued by the Department of Transportation
on the **29th day of January, 2004**

Classic Limited Air, Inc.

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

Docket OST 2004-16943

Served: January 29, 2004

CONSENT ORDER

This consent order concerns unauthorized service by Classic Limited Air, Inc., (CLA) which performed operations as a common carrier without the requisite economic authority from the Department. CLA is an operator of commercial services with large aircraft operated pursuant to 14 CFR Part 125. Authority under this Federal Aviation Administration (FAA) regulation, however, is strictly limited to private carriage operations.¹ In commercial operations with large aircraft that 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. § 41101.² CLA has nonetheless performed significant common carriage service since 1999. CLA's unauthorized service as a common carrier, in addition to violating the certificate requirements of Title 49, constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. This order assesses a compromise civil penalty of \$150,000 and directs CLA to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712.

Pursuant to 49 U.S.C. §§ 41101 and 41102, citizens of the United States may not engage in air transportation unless they hold a certificate of public convenience and necessity authorizing them to provide air transportation as an air carrier.³ An "air carrier" means a

¹ 14 CFR 125.11(b) provides that "[n]o certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish transportation."

² Carriers engaged in common carriage with large aircraft must also be certificated by the FAA under 14 CFR Part 121. 14 CFR 119.1.

³ A "citizen" includes a person, partnership, corporation, or association. 49 U.S.C. § 40102(a)(15).

citizen “undertaking by any means, directly or indirectly, to provide air transportation.”⁴ “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.⁵ Common carriage, in the context of air service, consists of the provision or holding out of air transportation to the general public for compensation or hire.⁶ From the standpoint of the requirements of section 41101, the holding out of service, as well as the actual operation of air service, constitutes “engaging” in air transportation.⁷ Violations of section 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In August 1999, CLA began operations with a Boeing 727 and a Boeing 737-7BC, commonly known as a Boeing Business Jet (BBJ). Since then, CLA has provided air service pursuant to a significant number of contracts with a diverse range of entities, including a political campaign, a real estate development company, sports teams, rock bands, film production companies, various celebrities, and numerous charter brokers and agents.⁸ Service ranged from single flights to operations over several months.

On the question of whether it has held out air transportation, CLA states that it neither advertised nor directly solicited business. Rather, CLA maintains that the demand for its ostensibly private carriage service was driven solely, if indirectly, by “word of mouth.” However, even assuming that the carrier did not actively solicit business, its objective conduct involved the provision of air transportation to a significant number of diverse entities and, by doing so, it engaged in a course of conduct evincing a willingness to serve members of the general public indiscriminately.⁹ In effect, CLA gained a

⁴ 49 U.S.C. § 40102(a)(2).

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

⁶ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993); *Voyager 1000 v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1973); *Las Vegas Hacienda, Inc., v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1962); *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 C.A.B. 583 (1965); *SportsJet, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2003-12-23 (2003); *Sky King, Inc., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2002-10-18 (2002).

⁷ Prior to 1994, when Title 49 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 § 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.

⁸ A company may not hold out air transportation services, either directly or indirectly, without appropriate authority. Accordingly, the activities of several of the aforementioned charter brokers are under investigation by the Enforcement Office.

⁹ A holding out of common carriage may occur when a carrier engages in a course of conduct such that it gains a reputation for having a willingness to serve the public. *Woolsey*, 993 F.2d at 524 n.24; *Arrow Aviation, Inc., v. Moore*, 266 F.2d 488, 490 (8th Cir. 1959); *Alaska Air Transport, Inc. v. Alaska Airplane Charter Co.*, 72 F.Supp. 609, 610-11 (D. Alaska 1947); *Intercontinental*, 41 C.A.B. at 601; *SportsJet* at 3; *Sky King* at 2.

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. § 41101.¹⁰ In fact, so well-established was CLA's reputation that the carrier was frequently approached by air charter brokers who specialize in arranging air transportation services for members of the general public. The Office of Aviation Enforcement and Proceedings (Enforcement Office), therefore, believes that CLA has engaged in common carriage without appropriate economic authority. Holding out air transportation without requisite authority is also an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712.

In mitigation, CLA states it met with the FAA prior to obtaining Part 125 certification and reviewed, among other things, the standards governing private carriage, which the carrier maintains are scant and unclear. CLA also states that, at all times relevant to this matter, it believed that it was operating in conformance with the law. CLA attributes any "reputation" that it may have gained for providing air transportation to its owner's personal notoriety in the local community, rather than its operations. Finally, CLA notes that it has cooperated fully with the Department's investigation of this matter. In this regard, CLA has committed to the Department that it is in the process of phasing out its Part 125 operations and will soon begin the rigorous process of seeking the proper FAA and Departmental authorities to engage in interstate and foreign "common carriage" charter service.

The Enforcement Office views seriously CLA's violations of the Department's licensing requirements. We have carefully considered the facts of this case, including the information provided by CLA, and continue to believe that enforcement action is necessary. CLA, 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 the assessment of \$150,000 in compromise of potential civil penalties. Of this total penalty amount, \$75,000 shall be paid under the terms described below. The remaining \$75,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless CLA violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and CLA may be subject to further enforcement action. The Enforcement Office believes that this compromise is appropriate, serves the public interest, and creates an incentive for CLA and all companies to comply fully with the requirements of 49 U.S.C. §§ 41101 and 41712.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

¹⁰ The fact that a carrier "may limit its service to a class or segment of the general public... does not detract from [its] status as a common carrier so long as it indicates a willingness to serve all within the class." *Intercontinental*, 41 C.A.B. at 601. See also *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993) (carrier that held out its service only to rock and country music stars was nevertheless engaged in common carriage).

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 Classic Limited Air, 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 Classic Limited Air, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Classic Limited Air, Inc., and all other entities owned and controlled by, or under common ownership and control with Classic Limited Air, Inc., and their successors and assignees, are ordered to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712;
5. Classic Limited Air, Inc., is assessed \$150,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of the assessed penalty, \$75,000 is due and payable within 30 days of the date of issuance of this order. The remaining \$75,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless Classic Limited Air, 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 Classic Limited Air, Inc., may be subject to further enforcement action. Failure to pay the penalty as ordered shall also subject Classic Limited Air, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
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.

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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