



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

Issued by the Department of Transportation
on the 3rd day of November 2005

**Ceres Group, LLC, d/b/a Team Flight Support
and Joseph A. DePaulis**

Docket OST 2005-20077

**Violations of 49 U.S.C. §§ 41101 and 41712
and 14 CFR 399.80**

Served November 3, 2005

CONSENT ORDER

This consent order concerns common carriage air service held out without the requisite Departmental economic authority by Ceres Group d/b/a Team Flight Support (TFS) and Mr. Joseph A. DePaulis (Mr. DePaulis and TFS are hereinafter collectively referred to as "Respondents"). Such conduct contravenes 49 U.S.C. § 41101, the Department's aviation licensing requirement, and 49 U.S.C. § 41712, which prohibits ticket agents and air carriers from engaging in unfair and deceptive trade practices and unfair methods of competition. This order also concerns Respondents' separate and distinct violations of 14 CFR 399.80(a), which details certain proscribed practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. Accordingly, it directs Respondents to cease and desist from such further violations and assesses TFS a compromise civil penalty of \$20,000.

In addition to applicable FAA requirements, in order to engage directly or indirectly in air transportation, citizens of the United States¹ must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. §§ 41101 and 41102, or in the form of an exemption from the

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

certificate requirement, such as those applicable to direct air carriers² operating as air taxis under 14 CFR Part 298 and indirect air carriers³ functioning as public charter operators pursuant to 14 CFR Part 380 or air freight forwarders under 14 CFR Part 296. From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation.⁴ Engaging in air transportation without economic authority, in addition to violating section 41101, constitutes an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Entities or persons, such as air charter brokers, who do not have Departmental economic authority may not, as principals, enter into contracts with direct air carriers for air transportation and then re-sell that air transportation pursuant to separate contracts with charter customers. Selling or re-selling air transportation without economic authority violates the certificate requirement in 49 U.S.C. § 41101. Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(2), air charter brokers, even if they act as agents of direct air carriers or agents of charter customers⁵, may not create the false impression that they are direct air carriers. Such misrepresentations violate 14 CFR 399.80(a) and, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.

TFS is an air charter broker that does not hold economic authority from the Department. Joseph A. DePaulis is the owner, president, and chief executive officer of TFS and was, at all times relevant herein, the animating force behind TFS’s operations. Between October 2004 and March 2005, when it ceased functioning as a business, TFS endeavored to link prospective charterers with direct air carriers. On at least one occasion during this time, notwithstanding its lack of economic authority, TFS contracted as a principal with a direct air carrier for air transportation, which TFS then re-sold to a third-party charterer in violation of 49 U.S.C. §§ 41101 and 41712.

² An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a “direct air carrier.”

³ An entity or person who is not a direct air carrier, but who solicits in his or her own right members of the public to purchase air transportation is an “indirect air carrier.” See, e.g., *Bratton v. Shiffrin*, 635 F.2d 1228 (7th Cir. 1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

⁴ 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.

⁵ Obtaining authorization from the customer to act on the customer’s behalf as its agent or from the direct air carrier to act on its behalf as its agent in signing contracts for air transportation are two of the lawful means of conducting business as an air charter broker. *Notice on the Role of Air Charter Brokers in Arranging Air Transportation*, 69 Fed. Reg. 61429, Oct. 18, 2004, *erratum* published 69 Fed. Reg. 62321, Oct. 25, 2004.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) of TFS's advertising practices revealed additional violations of these statutes, as well as of 14 CFR 399.80(a). Specifically, TFS's Internet website contained language that could have led a reasonable consumer to believe that TFS was a direct air carrier, which it was not. For example, the website included an on-line reservation system through which customers could book round-trip or one-way flights at "our 2005 flight fares."⁶ In addition, TFS placed a statement on its "Reservation Center" page advising customers interested in booking air transportation that "TFS [would] not be flying to Bristol or Martinsville," thereby implying that TFS flew elsewhere, including the twenty-nine cities listed on another page entitled "Our Price Map". Prospective consumers perusing the site further saw that TFS held out a "2005 flight schedule" that consisted of "round-trip flights for each race weekend to support all three major NASCAR race series." Consumers could then have reasonably assumed that these flights were to have been conducted by TFS aboard the aircraft displayed on its "Our Aircraft" page, which stated that "Team Flight Support operates several types of aircraft, including the Boeing 737-800 for flights up to 173 passengers and the Boeing 717 aircraft capable of flying 117 customers."⁷ Through these and other statements on its Internet website, TFS held out direct air transportation when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). TFS's conduct was particularly troubling in light of the Department's recent notice cautioning against the use of misleading statements, phrases, and terms by entities or persons who lack proper economic authority.⁸

The Enforcement Office has carefully considered all of the information available to it, including that provided by Respondents, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Respondents have reached a settlement of this matter. Without admitting or denying the violations described above, Respondents agree to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80. TFS further agrees to the assessment of \$20,000 in compromise of potential civil penalties otherwise assessable against it. The Enforcement Office believes that 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 air charter brokers or other ticket agents that hold themselves out as providing for or arranging air transportation.

⁶ TFS maintains that it sold only single entity charters through its reservation system and that it never sold individual tickets via this or any other means.

⁷ This page also included a fine-print disclaimer identifying the direct air carrier that actually operated the B-717. However, incomplete and lacking sufficient prominence, the disclaimer did little to clarify the misleading effect of the website generally.

⁸ See Note 5, *supra*.

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 Ceres Group, LLC, d/b/a Team Flight Support and Joseph A. DePaulis violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that Ceres Group, LLC, d/b/a Team Flight Support and Joseph A. DePaulis violated 14 CFR 399.80(a), as described above, by misrepresenting itself as an air carrier;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Ceres Group, LLC, d/b/a Team Flight Support and Joseph A. DePaulis engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order Ceres Group, LLC, d/b/a Team Flight Support and all other entities owned and controlled by or under common ownership and control with Ceres Group, LLC, d/b/a Team Flight Support and their successors and assignees and Joseph A. DePaulis to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a);
6. We assess Ceres Group, LLC, d/b/a Team Flight Support a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above; and
7. We order Ceres Group, LLC, d/b/a Team Flight Support to pay the compromise civil penalty assessed in ordering paragraph 6, above, within 30 days of the issuance of this order. Said payment 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 subject Ceres Group, LLC, d/b/a Team Flight Support 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.

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:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*

Attachment

(1) To 021030004	(2) Type		
(3) From	(4) Ref.	(5) Amount	
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

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. Jamie Cottrell, Office of Financial and Budget, General Accounting Branch, AMZ-300, P.O. Box 25780, Oklahoma City, Oklahoma 73125, phone: (405) 954- 4279 fax: (405) 954-1620. To ensure proper credit, notify Ms. Cottrell when each payment is made.