



**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 November, 2006

**Classic Designs of Tampa Bay, Inc., d/b/a  
Bell Air Aviation**

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

**Docket OST 2006-23528**

**Served November 29, 2006**

**CONSENT ORDER**

This consent order concerns unauthorized air transportation by Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation (Classic Designs). Since at least January 1, 2006, Classic Designs has engaged in air transportation using a Boeing 727 aircraft without holding the requisite economic authority from the Department. This order directs Classic Designs to cease and desist from such future unlawful conduct and assesses it a compromise civil penalty of \$90,000.

In addition to applicable Federal Aviation Administration (FAA) safety-related requirements, in order to engage directly or indirectly in air transportation, a citizen of the United States<sup>1</sup> is required to hold economic authority<sup>2</sup> from the Department pursuant to

<sup>1</sup> 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).

<sup>2</sup> Generally, economic authority is granted to large aircraft operators (i.e., operators of aircraft, such as the Boeing 727, 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. 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 escrow requirements to protect charterers' funds and expectations (14 CFR 212.8 and 380.34). In addition, certificated carriers must also receive safety

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Under Department enforcement case precedent, violations of section 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>6</sup>

Classic Designs is a citizen of the United States incorporated in Florida and an operator of aircraft pursuant to 14 CFR Part 125. Classic Designs has never held economic authority from the Department. However, since at least January 2006, Classic Designs has held out and performed significant common carriage service aboard an executive-configured Boeing 727 aircraft (N727PX) in contravention of 49 U.S.C. §§ 41101 and 41712. Specifically, Classic Designs provided single-entity<sup>7</sup> charter air service to a number of customers, including a rap group and various high net-worth individuals, some of whom Classic Designs obtained by indirectly holding out the availability of its aircraft to the public through third-party air charter brokers.<sup>8</sup>

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certification from the FAA and comply with the appropriate set of associated operating rules prescribed by that agency.

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

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

<sup>4</sup> See, e.g., *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5<sup>th</sup> Cir. 1993).

<sup>5</sup> 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.

<sup>6</sup> See, 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).

<sup>7</sup> A single-entity charter is a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by the individual passengers.

<sup>8</sup> A non-common carrier may not perform common carriage operations that result from the marketing efforts of a third-party, such as another air carrier or an air charter broker, agent, or affiliated company. See, e.g., *Contract Air Cargo, Inc., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2005-3-39 (Mar. 30, 2005).

Even assuming that Classic Designs did not indirectly solicit business, its operations involved the provision of air transportation to several different entities and, by doing so, it engaged in a course of conduct that evinced a willingness to provide passenger air transportation to the public, thereby constituting an unlawful holding out of common carriage via reputation.<sup>9</sup> Although Classic Designs avers that it has not held out in this manner, the number of customers that Classic Designs served exceeds any reasonable interpretation of the boundaries of private carriage for hire under relevant precedent.<sup>10</sup>

In mitigation, Classic Designs states its current owner only recently purchased the company and did not intend to engage in common carriage operations. Classic Designs states that its current owner had no prior knowledge of the limits of permissible operations pursuant to Part 125 and that it relied strictly on the knowledge of a single employee with extensive aviation experience, who was hired to maintain and operate the Classic Designs' aircraft on its behalf. According to Classic Designs, following the purchase of the company by its current owner in April 2005, its aircraft did not fly pursuant to Part 125 until late 2005. Classic Designs further states that it is a small business concern as defined in 15 U.S.C. § 632 with one part-time employee. Classic Designs asserts that it has no office, telephone, or website and does not have any authorized listings of availability in any advertising or trade medium, including aircraft literature or trade periodicals. Upon notification from the Department of alleged violations, Classic Designs states that it immediately undertook remedial action to satisfy the Department's concerns, including informing third parties that any and all unlawful activity of any kind whatsoever is unauthorized and for all persons or entities to cease and/or refrain from marketing the aircraft. Furthermore, Classic Designs states that it implemented a policy requiring the express authorization of either Classic Designs' president or its owner before any operations may be performed with its aircraft. Lastly, Classic Designs states that it has sought guidance from the Department and agreed to conduct any future operations in strict accordance with Departmental requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously the violations of the Department's licensing requirements by Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation. After a careful examination of all of the

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<sup>9</sup> A holding out of common carriage occurs when a carrier engages in a course of conduct such that it gains a reputation for having a willingness to serve the public. See, e.g., *Woolsey*, 993 F.2d at 524 n.24; *SportsJet, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2003-12-23 (Dec. 29, 2003) *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 C.A.B. 583, 601 (1965).

<sup>10</sup> In what it termed "a close one," the CAB, which held jurisdiction over aviation licensing matters prior to the Department, deemed as private certain air service operations by Part 125 operators Zantop International Airlines (Zantop) and Air Traffic Service Corporation (ATSC) that involved transporting cargo pursuant to contracts with the three major American automobile manufacturers, plus a *de minimus* level of non-automotive related traffic. *Automotive Cargo Investigation*, 70 C.A.B. 1540, 1554 (1976). Aside from the limited number of customers served by Zantop and ATSC, the CAB's decision in this case appeared predicated substantially on the fact that, at the time, duly licensed common carriers had "no meaningful capability" to provide service equivalent to that needed by the "Big Three." *Id.* at 1553. Today, by contrast, in the market Classic Designs serves (charter air transportation for entertainers and high net-worth individuals), there are numerous duly licensed common carriers capable of providing air transportation service equivalent to that which Classic Designs provides.

available information, including that provided by the carrier, the Enforcement Office continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation have reached a settlement of this matter. Without admitting or denying the violations described herein, Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation 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 \$90,000 in compromise of potential civil penalties otherwise assessable. Of this total amount, \$45,000 shall be paid under the terms described below. The remaining \$45,000 shall be suspended for one year following the date of issuance of this order and then forgiven, unless Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation 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 Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation may be subject to further enforcement action. This compromise is appropriate in view of the nature and extent of the violations in question and serves the public interest. Moreover, it creates a deterrent to future air transportation operations without appropriate economic authority by Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation, as well as by other similarly situated persons or other entities.

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 Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation, 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 Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation and all other entities owned or controlled by, or under common ownership with Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation, and their successors and assignees to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712.

5. We assess Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation a compromise civil penalty of \$90,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total amount, \$15,000 shall be due and payable on January 2, 2007, \$15,000 shall be due and payable on April 2, 2007, and \$15,000 shall be due and payable on July 2, 2007. The remaining \$45,000 shall be suspended for 12 months following the date of issuance of this order and then forgiven unless Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation 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 Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation may be subject to additional enforcement action. Failure to pay the penalty as ordered shall also subject Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation 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.

6. We order Classic Designs of Tampa Bay, Inc., d/b/a Bell Air Aviation to pay the compromise civil penalty assessed in ordering paragraph 5, above, 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 instructions contained in the Attachment to this order.

This order will become a final order of the Department ten 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)**

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