



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

Issued by the Department of Transportation
on the 22nd day of August, 2006

Mesa Airlines, Inc., d/b/a *go!*

Violations of 14 CFR 215.3

Docket OST 2006-23528

Served August 22, 2006

CONSENT ORDER

This consent order concerns advertising by Mesa Airlines, Inc., under the *go!* trade name, for inter-island service in Hawaii, prior to the approval by the Department of its registration of the *go!* trade name that violated 14 CFR Part 215. The order assesses a compromise civil penalty of \$20,000 and directs the carrier to cease and desist from future similar violations.

Under 14 CFR 215.3, a carrier may not advertise or sell air transportation under a trade name prior to the registration of that name with the Department. On March 23, 2006, Mesa applied to register the trade name “*go!*” under section 215.3 and the Department accepted the registration on May 30, 2006. After Mesa applied for, but prior to the Department’s acceptance of its registration, however, the carrier advertised its service under the proposed trade name on its website as well as in newspaper and radio advertisements, and issued a number of press releases referring to the *go!* trade name. Part 215 registration is aimed at precluding consumer confusion and unfair competition relating to air carrier trade names.

In mitigation, Mesa states that the Department’s review of trade names under section 215.3, as revised in 1987, is intended to be “purely ministerial” and not substantive.¹ Only cases involving a clear potential for consumer confusion, Mesa states, warrant enforcement action under the revised Part 215. The carrier argues that there was no possibility of consumer confusion in this instance, since the only carrier with a similar name, GoJet Airlines, LLC d/b/a United Express, operated in an entirely distinct market and under a completely different trade name (“United Express”). Mesa further points out that (i) its press releases and local print advertisements made it clear that “*go!*” was an operating division of Mesa Air Group and that these services would be operated by Mesa, and (ii) its radio and television spots directed potential customers to the website or a company telephone number, where the same information was readily available.

¹ See, *Notice of Proposed Rulemaking* at 53 *Fed. Reg.* 17921, 17922 ; May 19, 1988.

Although name similarity issues may be amenable to the consumer confusion test cited by Mesa, the failure to register a trade name is a different matter. We believe that Mesa's premature advertising activities using an unregistered trade name warrant enforcement action. In order to avoid litigation, Mesa Airlines, Inc. d/b/a *go!*, without admitting the alleged violations, has agreed to the issuance of this order to cease and desist from further violations of 14 CFR 215.3. By this order, Mesa is assessed \$20,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301, of which one-half will be payable within 30 days of date of issuance of this order and the remainder suspended for one year and then forgiven under the terms described below. 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 noncompliance with the Department's advertising regulations and trade name registration requirements by Mesa, as well as by other air carriers.

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 Mesa Airlines, Inc., d/b/a *go!*, violated 14 CFR 215.3 by advertising service under a trade name without first having properly registered with the Department to use the name;
3. Mesa Airlines, Inc., d/b/a *go!*, its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 215.3;
4. Mesa Airlines, Inc., d/b/a *go!*, is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violation described in ordering paragraph 2 above, of which \$10,000 shall be due and payable within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Mesa Airlines, Inc., d/b/a *go!*, complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Mesa Airlines, Inc., d/b/a *go!* may be subject to further enforcement action; and
5. 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 also subject Mesa Airlines, Inc., d/b/a *go!*, 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:

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