



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

Issued by the Department of Transportation
On the 4th day of March, 2008

Jet One Jets, Inc.

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

Docket OST 2008-0031

Served March 4, 2008

CONSENT ORDER

This consent order concerns the unlawful holding out of air transportation by Jet One Jets, Inc., (JOJ) in contravention of the statutory licensing requirements of 49 U.S.C. § 41101, and 49 U.S.C. § 41712, which prohibits ticket agents and air carriers from engaging in unfair and deceptive practices and unfair methods of competition. It directs JOJ to cease and desist from such further violations and assesses JOJ a compromise civil penalty of \$60,000.

Citizens of the United States¹ are required under 49 U.S.C. § 41101 to hold economic authority² from the Department, either in the form of a “certificate of public convenience and necessity” or in the form of an exemption³ from the certificate requirement, to engage directly or indirectly in air transportation. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places

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).

² This authority is separate and distinct from any safety authority required by the Federal Aviation Administration.

³ For example, exemptions may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or less) or indirect air carrier authority as a public charter operator pursuant to 14 CFR Part 380. 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.” An entity or person who is not a direct air carrier, but solicits in his or her own right members of the public to purchase air transportation is an “indirect air carrier.” 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).

in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air⁴. In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides to the public transportation by air between two points⁵.

Air charter brokers that do not have economic authority may not create the false impression that they are direct air carriers or hold out air transportation. Such conduct constitutes “engaging” in air transportation and violates 49 U.S.C. § 41101⁶. 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. § 41712.⁷

JOJ is an air charter broker incorporated in Delaware. It is a U.S. citizen for aviation licensing purposes. It does not hold economic authority from the Department or own or operate aircraft. An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) of JOJ’s advertising practices revealed violations of 49 U.S.C. §§ 41101 and 41712. Specifically, for a period of time during 2006, JOJ’s Internet website and print advertisements contained statements and omissions that, when considered together, would lead the public to conclude erroneously but reasonably that JOJ is a direct air carrier with operational control over flights. For example, the company’s homepage and its other advertisements stated that, “When you fly with Jet One, you’re more than a passenger.” The webpage entitled “Aircraft” included a statement that “[w]e offer a range of aircraft, from heavy jets ... to helicopters. In addition, each webpage contained a footer stating, in relevant part, that JOJ was a “full service private aviation provider,” whose services include “private jet operations” and the company’s “Services” webpage referred to “our private jets” and stated that “[w]e operate in countries around the world.” In sum, JOJ created the misimpression that it operated the aircraft used in the transportation by air that it held out to the public for compensation or hire. By doing so, it engaged unlawfully in air transportation.

The Enforcement Office finds JOJ’s website particularly troubling in light of the Department’s notice cautioning entities that lack proper economic authority against the

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

⁵ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

⁶ 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. 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.

⁷ e.g., *Imperial Jets, Inc.*, Order 2007-4-7 (April 6, 2007).

use of misleading statements, phrases, and terms.⁸ Through these and other statements on its Internet website and its print advertising, JOJ held out direct air transportation when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712.

While neither admitting nor denying wrongfully engaging in air transportation, in mitigation JOJ states that any violation of the Department's regulations was inadvertent due to the company's basic level of experience with the applicable regulations. JOJ also asserts that, because its customers are sophisticated business people who do not necessitate the consumer safeguards that the regulations mandate, the violations presented a minimal degree of risk of consumer harm. JOJ also points out that subsequent to being notified by the DOT of the alleged violations, it maintained a cooperative attitude and used its best efforts in ensuring compliance with the regulations.

The Enforcement Office has carefully considered all of the information available to it, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Jet One Jets, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Jet One Jets, Inc., agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712. Jet One Jets, Inc. further agrees to the assessment of \$60,000 in compromise of potential civil penalties otherwise assessable against it. Of this amount \$30,000 will be paid under the terms described in the ordering paragraph below. The remaining \$30,000 will be suspended and forgiven after one year, provided the company commits no further violations during that time period. 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 Jet One Jets, Inc., and other air charter brokers and ticket agents.

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 Jet One Jets, 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, Jet One Jets, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

⁸ 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.

4. We order Jet One Jets, Inc., and all other entities owned and controlled by or under common ownership with Jet One Jets, Inc., and its successors and assignees to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712;
5. We order Jet One Jets, Inc., to submit to the Office of Aviation Enforcement and Proceedings 30 days prior to the one-year anniversary of the service date of this order, copies of all advertising material, including print-outs of all versions of its Internet website, that Jet One Jets, Inc., has caused to be published since the service date of this order;
6. We assess Jet One Jets, Inc., a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of the total penalty amount, \$30,000 shall be paid as follows: \$5,000 shall be due and payable within 15 days of the date of issuance of this order. An additional \$25,000 shall be paid as follows: \$5,000 paid on May 1, 2008, \$5,000 paid on July 1, 2008, \$5,000 paid on September 1, 2008, \$5,000 paid on November 1, 2008 and \$5,000 paid on January 1, 2009. The remaining \$30,000 shall be suspended for twelve months after the date of issuance of this order and then forgiven, unless Jet One Jets, Inc., violates this order's cease and desist or payment provisions during that one-year time period, in which case the entire sum shall become due and payable immediately. Failure to pay the penalty as ordered shall subject Jet One Jets, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and possible enforcement action for failure to comply with this order; and
7. 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.

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)

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