



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

Issued by the Department of Transportation
On the 21st Day of October 2009

V1 Jets International, Inc.

**Violations of 49 U.S.C. §§ 41101 and 41712 and
14 CFR Part 399**

Docket OST 2009-0001

Served October 21, 2009

CONSENT ORDER

This consent order concerns violations by V1 Jets International, Inc., (“V1 Jets”) of 49 U.S.C. § 41101, the Department’s aviation licensing requirements, 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 V1 Jets’ separate and distinct violation of 14 CFR 399.80(a), which proscribes certain practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. This order directs V1 Jets to cease and desist from such further violations and assesses V1 Jets a compromise civil penalty of \$40,000.

Applicable Law

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

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.2 1228 (7th Cir.

engage⁴ directly or indirectly in air transportation. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places 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 air.⁵ 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 points.⁶

Air charter brokers that do not have Departmental economic authority may not, as principals, enter into contracts with direct air carriers⁷ for air transportation and then resell the same air transportation pursuant to separate contracts with charterers, i.e. charter customers. Such conduct makes the air charter broker an unauthorized indirect air carrier⁸ and violates the licensing requirements of 49 U.S.C. § 41101. 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. Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(2), air charter brokers, even when acting as agents of direct air carriers or agents of charterers,⁹ 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.

Background

V1 Jets is a Florida corporation that specializes in air charter broker services. It is a U.S. citizen for aviation licensing purposes. It does not hold economic authority from the Department, nor does it operate aircraft.

1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

⁴ 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.

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

⁶ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

⁷ See *supra* note 3.

⁸ *Id.*

⁹ Obtaining authorization from the customer to act on the customer’s behalf as its agent or obtaining authorization 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”) revealed that V1 Jets, notwithstanding its lack of economic authority, contracted with direct air carriers to provide air transportation, which V1 Jets then re-sold as a principal to third-party charterers in violation of 49 U.S.C. §§ 41101 and 41712.

Furthermore, a review of V1 Jets’ advertising practices during the Enforcement Office’s investigation revealed violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Specifically, V1 Jets’ Internet website contained language that reasonably could have led a consumer to conclude that V1 Jets is a direct air carrier with operational control over flights, which it is not. For example, the homepage of the V1 Jets website contained an “About Our Aircraft” section heading. Further, the portion of V1 Jets’ website entitled “Our Aircraft” stated, “V1 Jets has a wide assortment of large airplane charter jets for rental purposes,” and referred to “[o]ur private jet fleet” The website also informed consumers to “[r]eview our different business air charter planes to find the one that corresponds to your needs.” Through these and other statements on its Internet website, V1 Jets 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).

Mitigation

In mitigation, V1 Jets asserts that it has always intended to comply fully with all regulations pertaining to the presentation and advertising of airfare. Any violations of Department regulations were inadvertent. Furthermore, V1 Jets points out that upon receiving notice from the Enforcement Office, it took immediate corrective measures and has worked with the Enforcement Office to bring its website into full compliance with Department regulations.

Decision

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 V1 Jets International, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, V1 Jets International, Inc., agrees to the issuance of this order and to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80. V1 Jets International, Inc., further agrees to the assessment of \$40,000 in compromise of potential civil penalties otherwise assessable against it. 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 V1 Jets International, 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 V1 Jets International, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that V1 Jets International, Inc., violated 14 CFR 399.80(a), as described above, by misrepresenting itself as a direct air carrier;
4. We find that, by engaging in the conduct described in paragraphs 2 and 3, above, V1 Jets International, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order V1 Jets International, 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 any e-mail solicitations and all versions of its Internet website, that V1 Jets International, Inc., has caused to be published since the service date of this order;
6. We order V1 Jets International, Inc., and all other entities owned and controlled by or under common ownership with V1 Jets International, Inc., and its successors and assignees to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a);
7. We assess V1 Jets International, Inc., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above. Of this total penalty amount, \$20,000 shall be due and payable in ten equal installments to be paid on October 31, 2009, November 30, 2009, December 31, 2009, January 31, 2010, February 28, 2010, March 31, 2010, April 30, 2010, May 31, 2010, June 30, 2010, and July 31, 2010. The remaining \$20,000 shall be due and payable if, within one year following the date of issuance of this order, V1 Jets International, Inc., violates this order's cease and desist provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and V1 Jets International, Inc., may be subject to additional enforcement action for failure to comply with this order; and
8. 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 in accordance with the instructions contained in the Attachment to this order. Failure to pay any portion of the penalty as ordered shall subject V1 Jets International, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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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