



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

Issued by the Department of Transportation
On the Ninth day of July, 2010

**Delta Air Lines, Inc. and
Northwest Airlines, Inc.**

**Violations of 14 CFR 257.5(a) and (d), and
49 U.S.C. § 41712**

Docket OST-2010-0005

Served July 9, 2010

CONSENT ORDER

This order concerns apparent violations by Delta Air Lines, Inc., (Delta), and its operating subsidiary Northwest Airlines, Inc.¹ (“Northwest”) of the Department’s code-share disclosure rule, 14 CFR Part 257, and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. The instant order directs Delta to cease and desist from future violations of Part 257 and section 41712, and assesses Delta, individually and as successor to Northwest, \$80,000 in civil penalties.

Section 257.4 of the code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-share arrangement is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 unless, in conjunction with that holding out or sale, carriers follow certain notice requirements, including those of 14 CFR 257.5(a) and (d). With regard to written or electronic schedule information concerning a flight that is part of a code-share arrangement, section 257.5(a) requires that carriers disclose in written or electronic schedule information available to the public, including the Official Airline Guide (OAG) and, where applicable, computer reservation systems, the corporate name of the transporting carrier, and any other name under which the flight is held out to the public. Likewise, with regard to published advertisements for air transportation services provided under a code-share arrangement, including those published on the Internet, section 257.5(d) states that the advertisement must identify all potential transporting carriers by corporate name “and by any other name under which that service is held out to the public.” Violations

¹ At all times relevant to the subject matter of this order, Delta Air Lines, Inc., and Northwest Airlines, Inc., were and remained separate and distinct legal entities. This order addresses the two carriers simultaneously due to the common causes of the violations addressed herein, and in recognition of the merger of the two carriers’ operating certificates, completed December 31, 2009, after which Northwest Airlines, Inc., ceased to exist as a separate legal entity, and as a consequence of which Delta Air Lines stands as its sole successor in interest.

of either section 257.5(a) or 257.5(d) also constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a significant lack of compliance by Delta with section 257.5. For a period during mid-2009, both Delta and Northwest submitted schedule and fare data to the OAG that failed to include a disclosure of the “Delta Connection” trade name used by their regional carrier affiliates.² The failure to provide this information to the OAG resulted in a failure by every automated booking engine that relies on the OAG for schedule and fare data, including the carriers’ own websites (<http://www.delta.com> and <http://www.nwa.com>), and the websites of Delta and Northwest agents Orbitz, Travelocity, Expedia, and others, to accurately report to consumers the trade name used by the regional carrier affiliates of both Delta and Northwest, as required by section 257.5(a) and (d).³ Thus, for example, if a potential customer conducted an airfare search from Delta’s main webpage for flights from Washington-Reagan National Airport (DCA) to Indianapolis International Airport (IND), the search results would properly identify each operating carrier as well as its code-share relationship to Delta or Northwest, as appropriate, but in every instance, would fail to state that carriage would be provided under the “Delta Connection” trade name. The omission affected the marketing of hundreds of flights, across all major online sales channels, and potentially impacted the purchasing and travel decisions of thousands of customers across a period of at least three to four months.

The Enforcement Office believes that the failure by both Delta and Northwest to provide the required trade name information likely resulted in confusion for and inconvenience to many passengers, increasing the risk of missed connections or missed flights, particularly at those airports where, during the affected period, Delta and Northwest continued to utilize check-in and gate facilities at different terminals (such as DCA and PHL), and particularly with respect to those flights, and with respect to those regional affiliates, that consumers may have reasonably expected to still be operating under the “Northwest AirlinK” trade name.

In mitigation, on behalf of itself and Northwest, Delta states that it is committed to strict compliance with the disclosure requirements of Part 257 and corrected the omission of the “dba Delta Connection” language in its schedule loads promptly after the Department brought this issue to its attention. Delta further notes that prior to correction, the schedules published by both Delta and Northwest disclosed the existence of a code-share relationship, where appropriate, and the identity of the operating carrier. Delta therefore contends that it fully complied with the spirit of Part 257.

² Delta’s “regional affiliates,” as referenced herein and which operated under the “Delta Connection” trade name during the effected period, included Atlantic Southeast Airlines, Inc. (ASQ), Chautauqua Airlines, Inc. (CHQ), Comair (COM), Compass Airlines (CPZ), Freedom Airlines, Inc. (FRL), Mesaba Aviation, Inc. (MES), Pinnacle Airlines (FLG), Shuttle America Corp. (TCF), and SkyWest Airlines, Inc. (SKW). Of these, only COM, CPZ and MES were wholly or majority owned by Delta. Northwest’s “regional affiliates,” as referenced herein and which were operated under the “Delta Connection” trade name during the effected period, included Compass Airlines (CPZ), Mesaba Aviation, Inc. (MES), and Pinnacle Airlines, Inc. (FLG).

³ Affected fare and schedule data that appeared on the carriers’ own websites constituted “published advertisements” within the meaning of 14 CFR 257.5(d).

Delta agrees that potential customer confusion during the airport check-in process is a vital concern, and asserts that it is one it takes very seriously. Nevertheless, Delta argues that, as a result of contemporaneous efforts to inform the public of service changes occurring as part of its merger with Northwest, its failure, and the failure by Northwest, to include the “dba Delta Connection” trade name in any of its published fare and schedule information during the affected period did not create actual confusion in the minds of its customers.

In October 2008, Delta closed its merger with Northwest. Delta points out that it took several specific steps during the weeks and months that followed to ensure that the traveling public was fully informed of the operational changes being made as the merger process proceeded. Delta emphasizes that it voluntarily chose to dedicate extensive resources to, among other things, communicating as clearly as possible to Delta and Northwest passengers where they needed to check-in for Delta and Northwest flights (including those of the regional Delta Connection partners) operated during the transitional period of the merger. Moreover, Delta points to additional measures taken at the airport to assist customers who for any reason arrived at the wrong terminal for check-in during the merger integration process. These measures included the provisioning of additional signage and pre-printed information cards, the introduction of special procedures to allow check-in of passengers and baggage from any Delta or Northwest counter, and the allocation of standby ground transportation to deliver passengers and baggage from one terminal to the other if the need arose.

Delta contends that disclosure of the relevant terminal information in those itineraries and boarding passes provided through its own websites, and the additional measures taken at the airport, were a much more direct and effective means of addressing potential customer confusion than full compliance with Part 257. Delta argues that mere full compliance with Part 257 would not have adequately communicated terminal information to customers, particularly as OAG data are frequently viewed or used by a customer weeks or months in advance of the anticipated date of travel. Indeed, Delta asserts that full compliance with Part 257 actually might have led some passengers to erroneously assume a given “Delta Connection” flight was departing from the pre-merger Delta facilities, when it was actually departing from the pre-merger Northwest facilities, and so might have *caused* more confusion than it would cure.

We have carefully considered the mitigating factors put forward by Delta, but continue to view seriously the failure of Delta and Northwest to disclose the trade name of their regional connection code-share partners as required by 14 CFR Part 257. We are unconvinced that any component requirement of Part 257 is rendered mere surplusage where a carrier makes disclosures in airport signage, or takes other steps, to achieve, in its sole judgment, the same end. The Enforcement Office recognizes that the efforts by both Delta and Northwest to inform customers of proper terminal and gate locations for all of the flights marketed under their codes, regardless of the business names or liveries used by their affiliated code-share partners, likely mitigated the confusion resulting from their failure to fully and adequately disclose business name information in their OAG schedule data. A carrier’s perception that it must do *more* than Part 257 requires, however, does not excuse the carrier from also complying with the rule’s specific disclosure requirements. At a time when relevant customer confusion was likely to peak, precisely when new business names and liveries were being applied to entire fleets of aircraft, the violations of Part 257 discussed herein could only

contribute to an even higher level of confusion that subsequent disclosures and signage would struggle to undo.

Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, Delta, individually and as successor to Northwest, agrees to the issuance of this order to cease and desist from future similar violations of Part 257 and 49 U.S.C. § 41712, and to the assessment of \$80,000 in compromise of potential civil penalties otherwise assessable against it. We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a meaningful incentive to all airlines to comply with the Department's code-share disclosure rule.

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 Delta Air Lines, Inc., violated 14 CFR 257.5(a) and (d) by failing to disclose code-share arrangements as required;
3. We find that Northwest Airlines, Inc., violated 14 CFR 257.5(a) and (d) by failing to disclose code-share arrangements as required;
4. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Delta Air Lines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We find that by engaging in the conduct and violations described in ordering paragraph 3, above, Northwest Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order Delta Air Lines, Inc., and all other entities owned and controlled by or under the common ownership and control with Delta Air Lines, Inc., and their successors and assignees to cease and desist from further similar violations of 14 CFR Part 257 and 49 U.S.C. § 41712;
7. Delta Air Lines, Inc., individually and as successor to Northwest Airlines, Inc., is assessed a compromise civil penalty of \$80,000 in lieu of civil penalties that might otherwise be assessed for the violations described herein. Of the total penalty amount, \$40,000 shall be due and payable no later than 15 days after the date this order is issued. The remaining \$40,000 shall become due and payable if Delta Air Lines, Inc., violates this order's cease and desist provision within one year following the date of issuance of this order, or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately; 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. The wire transfer shall be executed in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Delta Air Lines, Inc., its successors or assignees, to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible further enforcement action for failure to comply with this order

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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