



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

Issued by the Department of Transportation
On the Sixteenth day of September, 2011

Lowestfare.com, LLC

**Violations of 14 CFR Part 257 and
49 U.S.C. § 41712**

DOT OST-2011-0003

Served September 16, 2011

CONSENT ORDER

This consent order concerns violations by Lowestfare.com, LLC (Lowestfare), an online ticket agent, 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. It also directs Lowestfare to cease and desist from future violations of Part 257 and section 41712 and assesses it a \$50,000 civil penalty.

Section 257.4 of the Department's code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing 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, air carriers and ticket agents follow certain notice requirements, including those of 14 CFR 257.5(d). The specific terms of section 257.5(d) require that print advertisements, including those published on the Internet, "prominently disclose that the advertised service may involve travel on another carrier," "clearly indicate the nature of the service in reasonably sized type," and "identify all potential transporting carriers... by corporate name and by any other name under which that service is held out to the public."

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Lowestfare with section 257.5. For a period of time during 2010, Lowestfare failed to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated on behalf of a major air carrier by a regional air carrier on its Internet website. Specifically, it did not display the corporate names of the transporting carriers and any other names under which those flights were held out to the public on its flight itinerary pages or the initial page on which fares were advertised to the public. Lowestfare's failure to properly disclose the

existence of code-sharing arrangements and the names of the transporting carriers could have deceived consumers regarding the identity of the airline that actually operated the aircraft on which they flew.

In mitigation, Lowestfare states that it did not intend to violate any applicable statute, regulation, or policy. Lowestfare states that it takes its compliance obligations very seriously and actively endeavors to ensure compliance with all DOT requirements, as well as to proactively address any concerns voiced by consumers.

Lowestfare states that at the relevant time, it understood that its practices were in compliance with the existing requirements, i.e., for code-share flights, Lowestfare attempted to inform consumers of the identity of the operating carrier prior to booking. Lowestfare explains that section 257.5 does not state that code-share disclosures must be made as part of the initial results presented in the online booking process, nor had the Department so specified in public guidance. Lowestfare states that once it was made aware of the Department's concerns, it responded swiftly, and revised its displays accordingly within 10 days on both www.airfares.com and related sites. Lowestfare also states that it has fully cooperated with the Department in this investigation in all respects.

Lowestfare states that its exemplary compliance disposition, in regard to code-share disclosures (and generally), is further demonstrated by events that occurred later in the year after new code-share requirements were imposed by Congress when it enacted 49 U.S.C. § 41712(c), which specifically requires disclosure in initial search results. Lowestfare states that it updated its displays to comply with the new statute before public guidance was issued by the Department, and long before the deadline set by the Department for ticket agents to comply.

Lowestfare states that because of the lack of clear guidance provided to the public and the improbability that an identical violation would occur in the future due to a change of law, it believes that enforcement action was not warranted. Lowestfare, however, explains that in the interest of resolving this matter, and to demonstrate its ongoing commitment to providing full, fair, and transparent information to consumers, Lowestfare has agreed to enter into this order.

We view seriously the failure of Lowestfare to disclose code-sharing arrangements as required by 14 CFR Part 257. 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, Lowestfare 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 \$50,000 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 and ticket agents 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 Lowestfare.com, LLC, violated 14 CFR 257.5(d) by failing to disclose code-sharing arrangements as required;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Lowestfare.com, LLC, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Lowestfare.com, LLC, and all other entities owned or controlled by or under common ownership with Lowestfare.com, LLC, and its successors and assignees to cease and desist from further violations of 14 CFR Part 257 and 49 U.S.C. § 41712;
5. We assess Lowestfare.com, LLC, \$50,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$25,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$25,000, shall become due and payable if, within one year of the date of issuance of this order, Lowestfare.com, LLC, violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Lowestfare.com, LLC, may become subject to additional enforcement action for violation of the order; and
6. 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 the penalty as ordered will subject Lowestfare.com, LLC, 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.

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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

*An electronic version of this document is available on the World Wide Web at
www.regulations.gov*