



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

Issued by the Department of Transportation  
On the Twenty-Second day of October, 2013

**Frosch International Travel, Inc.**

**Docket OST 2013-0004**

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

**Served: October 22, 2013**

**CONSENT ORDER**

This consent order concerns failures by Frosch International Travel, Inc. (“Frosch”) to disclose code-share arrangements during telephone conversations. Disclosure is required by 49 U.S.C. § 41712(c) and 14 CFR Part 257 during airline reservation calls. These failures to fully and timely disclose also violated 49 U.S.C. § 41712(a), a statutory prohibition against unfair and deceptive practices. This order directs Frosch to cease and desist from future violations of Part 257 and section 41712, and assesses \$65,000 in civil penalties.

**Applicable Law**

Frosch is a ticket agent<sup>1</sup> and is therefore subject to the code-share disclosure requirements found in 49 U.S.C. § 41712(c) and 14 CFR 257.5(b). Under section 41712(c), any “ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier” is required to disclose “whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket[,] the name of the air carrier providing the air transportation; and if the flight has more than one segment, the name of each air carrier providing the air transportation for each such flight segment.” Failure to disclose the required information is an unfair or deceptive practice in violation of section 41712. Section 257.4 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

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<sup>1</sup> A “ticket agent” is “a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.” 49 U.S.C. § 40102(a)(45).

violation of 49 U.S.C. § 41712, unless, in conjunction with that holding out or sale, carriers and agents follow certain requirements, including those of 14 CFR 257.5(b). With regard to oral communications concerning a flight that is part of a code-sharing arrangement, section 257.5(b) states that a ticket agent or carrier must disclose to prospective consumers before they book the flight the existence of the code-share arrangement, the corporate name of the transporting carrier, and any other name under which the flight is held out to the public. Violations of section 257.5(b) constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

### **Facts and Conclusions**

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of full compliance by Frosch with section 257.5(b) of the Department's code-share rule and 49 U.S.C. § 41712(c). For a period of time during January 2013, Enforcement Office staff made a number of telephone calls to Frosch as potential purchasers and inquired about booking flights. In almost all of the calls, Frosch reservation agents failed to disclose both the corporate and the marketing names of the transporting carrier, as required by the rule. In one call, the agent disclosed both the corporate and the marketing names of the carrier, but only after being prompted by the Enforcement Office staff caller. During three calls, Frosch agents disclosed either the corporate or the marketing name of the carrier, but again only after being prompted by the caller.

The Enforcement Office considers section 257.5(b) and 49 U.S.C. § 41712(c) to require that oral code-share disclosures be provided whenever an agent first mentions a code-share flight in response to a specific consumer inquiry, including inquiries that may involve only a request for information. In the test calls to Frosch, the agents failed to timely inform the callers of the identity of the airline that would actually operate the aircraft on which the consumer would be flying if that flight were booked, despite the callers identifying the code-share flight as being of interest to them.

### **Mitigation**

In mitigation, Frosch states that it considers compliance with regulatory requirements essential and strives to meet or exceed requirements in every instance. Upon learning of the Enforcement Office's concerns in this matter, Frosch states that it immediately notified all of its agents of those concerns and provided specific guidance (supplementing previous guidance) on when and how code-share disclosures should be made. Frosch also states that it arranged for managers in each of its offices to counsel agents directly to ensure compliance and instituted an internal test-call program to verify the results. Frosch is confident the above steps have eliminated any problem.

Frosch observes that 49 U.S.C. § 41712(c) requires code-share disclosure "prior to the purchase of a ticket." Frosch also notes that 14 CFR 257.5(b) states that code-share disclosure must take place "prior to booking transportation." Frosch believes that

Enforcement Office guidance on the timing of code-share disclosure did not adequately clarify that code-share disclosure should take place during the initial information-gathering stage, at the first mention of a code-share flight. Frosch believes that, particularly in the absence of more explicit guidance from the Enforcement Office, its agents complied substantially with the code-share rule.

### **Decision**

The Enforcement Office views seriously the failure of Frosch to properly disclose code-sharing arrangements as required by 49 U.S.C. 41712(c) and 14 CFR 257.5(b). 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, and without admitting or denying that any violation occurred, Frosch agrees to the issuance of this order, to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 257.5(b), and to the assessment of \$65,000 in compromise of potential civil penalties that otherwise might be imposed pursuant to 49 U.S.C. § 46301. 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 strong deterrent to non-compliance with the statute and the Department's code-share disclosure rule.

This order is issued under the authority contained in 49 CFR Part 1.

### **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 by failing to properly disclose code-sharing arrangements as required by 49 U.S.C. § 41712(c) and 14 CFR 257.5(b), Frosch International Travel, Inc., violated 14 CFR 257.5(b) and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
3. We order Frosch International Travel, Inc., all other entities owned or controlled by or under common ownership with Frosch International Travel, Inc., and its successors and assignees, to cease and desist from further violations of 49 U.S.C. § 41712(c) and 14 CFR 257.5(b);
4. We assess Frosch International Travel, Inc., \$65,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 above. Of this total penalty amount, \$32,500 shall be due and payable within thirty (30) days after the service date of this order. The remaining \$32,500 shall be paid if Frosch International Travel, Inc., violates this order's cease and desist provisions during

the twelve (12) months following the service date of this order, and Frosch International Travel, Inc., may be subject to further enforcement action; and

5. Payment shall be made through Pay.gov 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 Frosch International Travel, 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 ten (10) days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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