



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

Issued by the Department of Transportation
On the Twenty-Ninth day of August, 2013

FC USA, Inc., d/b/a Liberty Travel

Docket OST 2013-0004

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

Served: August 29, 2013

CONSENT ORDER

This consent order concerns violations by FC USA, Inc., d/b/a Liberty Travel (“Liberty”), when it failed to disclose code-share arrangements as required by 49 U.S.C. § 41712(c) and 14 CFR Part 257 during telephone airline reservation calls. These failures also constitute separate and distinct violations of 49 U.S.C. § 41712(a), the statutory prohibition against unfair and deceptive practices. The order directs Liberty to cease and desist from future violations of Part 257 and section 41712, and assesses \$100,000 in civil penalties.

Applicable Law

Liberty is a ticket agent¹ and is therefore subject to the detailed 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 of the code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is an unfair

¹ 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).

and deceptive trade practice in 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 Conclusion

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Liberty 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 and February of 2013, Enforcement Office staff made a number of telephone calls to Liberty as potential purchasers and inquired about booking a flight. During these calls, the Liberty reservations agents answering the calls failed to make the required disclosure regarding code-share arrangements for the flights in question. Specifically, when discussing flights marketed by one carrier but operated by another with the callers, Liberty's reservation agents only identified the marketing carrier and did not identify the corporate name of the carrier operating the flight or any other name under which the flight was operated, even when prompted by the caller.

As interpreted by the Department, section 257.5(b) and 49 U.S.C. § 41712(c) 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. The telephone calls indicated that Liberty generally failed to inform consumers booking flights involving code-share arrangements of the identity of the airline that would actually operate the aircraft on which the consumer would be flying.

Mitigation

In mitigation, Liberty states that it takes its obligations under the Department's code-share rule very seriously. Liberty states that it does not believe any agent has failed to disclose the operating carrier for a flight conducted under an international code-share; the Department's investigation was limited to code-share flights in selected domestic markets. Liberty has described the investments it has made to help ensure compliance and provide high quality customer service, both before and after receiving the Department's letter about this matter. Its investments include a new reservation system that, among other things, emphasizes the distinction between marketing and operating carriers. Liberty states that its training program for new hires will be amended to incorporate the policy that code-share disclosures must be made the first time an agent mentions a flight in response to an inquiry from the consumer. Liberty will also institute processes and procedures with the managers of each of its stores to help ensure compliance by its travel consultants with the code-share disclosure requirements. Liberty also states that it has no

record of receiving a consumer complaint related to code-share disclosures and that, in its view, it did not profit or gain any competitive advantage from its past policies.

Decision

We view seriously the failure of Liberty to 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, Liberty 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 \$100,000 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 disclose code-sharing arrangements as prescribed in 49 U.S.C. § 41712(c) and 14 CFR 257.5(b), FC USA, Inc., d/b/a Liberty Travel 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 FC USA, Inc., d/b/a Liberty Travel and all other entities owned or controlled by or under common ownership with FC USA, Inc., d/b/a Liberty Travel, 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 FC USA, Inc., d/b/a Liberty Travel \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 above. Of this total penalty amount, \$10,000 shall be due and payable within thirty (30) days of the date of the issuance of this order; \$20,000 shall be due and payable within sixty (60) days of the date of issuance of this order; and \$20,000 shall be due and payable within ninety (90) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$50,000, shall become due and payable immediately if, within one year of the date of issuance of this order, FC USA, Inc., d/b/a Liberty Travel violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case FC USA, Inc., d/b/a Liberty Travel may be subject to additional enforcement action for violation of this order; 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 FC USA, Inc., d/b/a Liberty Travel 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 motion.

BY:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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