



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

Issued by the Department of Transportation
On the Second day of January, 2014

**WK Travel, Inc.
d/b/a OneTravel**

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

Docket OST 2014-0001

Served: January 2, 2014

CONSENT ORDER

This consent order concerns violations by WK Travel, Inc., d/b/a OneTravel, 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 WK Travel to cease and desist from future violations of Part 257 and section 41712 and assesses \$95,000 in civil penalties.¹

Applicable Law

WK Travel is a ticket agent² 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

¹ WK Travel is part of the same legal family as Travelong, Inc. Both ticket agents use the same call center for taking phone reservations. In issuing this order, the Department has decided not to take separate enforcement action against Travelong for alleged violations of the same regulation and statute.

² 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).

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 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 significant lack of compliance by WK Travel 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 WK Travel as potential purchasers and inquired about booking a flight. During these calls, the WK Travel reservations agents answering these 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, WK Travel'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. The telephone calls indicated that WK Travel 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, WK Travel states that it takes very seriously its obligation to comply with the Department's consumer protection rules and 49 U.S.C. § 41712. WK Travel observes that 49 U.S.C. § 41712(c) requires code-share disclosure "prior to the purchase of a ticket." The Department's regulations further provide under 14 CFR 257.5(b) that code-share disclosure must take place "prior to booking transportation." WK Travel believes that the Enforcement Office's guidance on the timing of oral code-share disclosure did not adequately clarify that oral code-share disclosure should take place during the information-gathering stage of a call, at the first mention of a code-share flight. WK Travel believes that, particularly in the absence of explicit guidance from the Enforcement Office, it substantially complied with the Department's rules by disclosing the code-share information prior to a customer booking transportation. WK Travel additionally states that it does not believe any of its agents has failed to disclose the operating carrier for a flight conducted under an international code-share and points out

that the Enforcement Office's investigation was limited to code-share flights in selected domestic markets.

WK Travel further notes that it has no record of any customer complaint that a WK Travel ticket agent failed to disclose the operating carrier. Immediately after being notified of the Department's investigation, WK Travel states that it re-trained its ticketing agents on how to comply with the code-share disclosure rules and set up a rigorous quality control program to oversee its call center. Indeed, since the Department's investigation, WK Travel states that it has invested a substantial amount of money and resources in training, monitoring, and technology changes to ensure that its agents comply with the Department's oral code-share disclosure policy. Accordingly, WK Travel states that it can assure the Department that it is now in full compliance with these requirements.

Decision

We view seriously the failure of WK Travel 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, and without admitting or denying that any violation occurred, WK Travel 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 \$95,000 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), WK Travel, Inc., violated 14 CFR 257.5(b) and engaged in an unfair and deceptive practice in violation of section 41712;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, WK Travel, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712(a);

4. We order WK Travel, Inc., and all other entities owned or controlled by or under common ownership with WK Travel, Inc., its successors and assignees to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 257.5(b);

5. We assess WK Travel, Inc., \$95,000 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, \$47,500 shall be due and payable within 15 days from the date of issuance of this order. The remaining portion of the civil penalty amount, \$47,500, shall become due and payable immediately if, within one year of the date of issuance of this order, WK Travel, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case WK Travel, Inc., may be subject to additional enforcement action for violation of this order; and

6. 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 WK 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 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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