



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

Issued by the Department of Transportation
On the 10th day of August, 2009

Hawaiian Airlines, Inc.

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

OST-2009-0001

Served: August 10, 2009

CONSENT ORDER

This consent order concerns violations by Hawaiian Airlines, Inc., 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 directs Hawaiian Airlines to cease and desist from future violations of Part 257 and section 41712, and assesses the carrier \$50,000 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-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 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.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a significant lack of compliance by Hawaiian Airlines with section 257.5. In January, February and March of 2009, Enforcement Office staff made a number of telephone calls to Hawaiian Airlines' reservations line to determine if, as required by section 257.5(b), the carrier's employees were advising consumers of the code-share status of Hawaiian Airlines flights operated by other carriers. The Hawaiian Airlines reservations agents answering those calls failed to disclose the code-share status of the flights in question during a substantial number of those calls. Violations of Part 257 constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In mitigation, Hawaiian states its belief that this enforcement action was not based upon the complaint of a customer or member of the public concerned with code-share disclosure requirements. Hawaiian also states that it has recently moved its reservation function to an off-shore provider located in the Philippines and has found the transition difficult. Therefore, according to the carrier, it has renewed its surveillance and supervision of the contractor. Hawaiian further states that all reservation agents are being put through both initial and recurrent training, which will be completed by the end of June this year. According to the carrier, recent tests it conducted confirm to the company that these renewed training efforts of sales staff and supervisory personnel have resulted in marked improvement in reservation agent performance in general and compliance with Part 257, in particular. Hawaiian pledges that it will continue to monitor its reservations provider to ensure future compliance.

We view seriously the failure of Hawaiian Airlines, Inc., 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, Hawaiian Airlines, Inc., 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 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 Hawaiian Airlines, Inc., violated 14 CFR 257.5(b) 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, Hawaiian Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Hawaiian Airlines, Inc., and all other entities owned or controlled by or under common ownership with Hawaiian Airlines, Inc., 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 Hawaiian Airlines, Inc., a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of the total assessed penalty amount, \$25,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$25,000 will

become due and payable if Hawaiian Airlines, 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

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 any portion of the penalty as ordered shall subject Hawaiian Airlines, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional 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)

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