



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

Issued by the Department of Transportation
On the Sixth day of May, 2011

AirGorilla, LLC

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

**OST-2011-0003
Served May 6, 2011**

CONSENT ORDER

This consent order concerns violations by AirGorilla, LLC, (AirGorilla), an online airline 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 directs AirGorilla to cease and desist from future violations of Part 257 and section 41712 and assesses AirGorilla \$30,000 in civil penalties.

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, the advertiser follows 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 significant lack of compliance by AirGorilla with section 257.5. During at least the latter half of 2010, AirGorilla 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 www.airgorilla.com. 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. AirGorilla's failure to properly disclose the existence of code-sharing arrangements and the names of the transporting carriers could have resulted in consumers being deceived regarding the identity of the airline that was actually to operate the aircraft on which the consumer would be flying.

In mitigation, AirGorilla states that upon learning that its website was in violation of the Department's code-share disclosure regulations, AirGorilla immediately contacted its technology services provider, which alerted the GDS of the issue and discovered that the GDS did not, at that time, have the technology to retrieve and display detailed code-share information. AirGorilla states that its violation of the Department's code-share disclosure rule was an endemic industry-wide failure experienced by a preponderant number of independent OTAs accessing flight information through the same GDS. AirGorilla states that until the Department notified it, it had no reason to believe that it was not being provided with all of the required information by the GDS. AirGorilla states that it is now in compliance with the Department's code-share regulations.

We view seriously the failure of AirGorilla 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, AirGorilla 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 \$30,000 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 AirGorilla, 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, AirGorilla, LLC, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order AirGorilla, LLC, and all other entities owned or controlled by or under common ownership with AirGorilla, 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 AirGorilla, LLC, \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$15,000 shall be due and payable as follows: \$3,000 shall be due and payable within 30 days of the date of issuance of this order; four payments of \$3,000 each shall be due and

payable on July 1, 2011, August 1, 2011, September 1, 2011, and October 1, 2011. The remaining portion of the civil penalty amount, \$15,000, shall become due and payable if, within one year of the date of issuance of this order, AirGorilla, LLC, violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, AirGorilla, 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 AirGorilla, 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)

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