



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

Issued by the Department of Transportation
on the 19th day of July, 2017

Air X Aviation, Inc.

**Violations of 49 U.S.C. §§ 41101 and 41712
and 14 CFR Part 399**

Docket OST 2017-0001

Served July 19, 2017

CONSENT ORDER

This consent order concerns violations by Air X Aviation, Inc., (Air X Aviation) of 49 U.S.C. § 41101, the Department's aviation economic licensing requirements, and 14 CFR 399.80, which prohibits certain practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. Violations of section 41101 and 14 CFR 399.80 also constitute violations of 49 U.S.C. § 41712, which prohibits air carriers and ticket agents from engaging in unfair and deceptive trade practices and unfair methods of competition in the provision of air transportation. This order directs Air X Aviation to cease and desist from such further violations and assesses Air X Aviation a compromise civil penalty of \$25,000.

Applicable Law

In order to engage directly or indirectly in air transportation, citizens of the United States¹ are required under 49 U.S.C. § 41101 to hold economic authority² from the Department, either in the

¹ A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

² This authority is separate from any safety authority required by the Federal Aviation Administration.

form of a “certificate of public convenience and necessity” or in the form of an exemption³ from the certificate requirement. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air.⁴ In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides public transportation by air between two points.⁵

Air charter brokers that do not have economic authority may not hold out air transportation. Such conduct constitutes “engaging” in air transportation and violates 49 U.S.C. § 41101.⁶ Under the Department’s enforcement case precedent, violations of section 41101 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.⁷ Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(45), air charter brokers may not create the false impression that they are direct air carriers when they are not. Such misrepresentations violate 14 CFR 399.80(a) and, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.⁸

Background

Air X Aviation is a Florida corporation that specializes in air charter broker services. Air X Aviation is a subsidiary of Air X Charter Holding, Ltd (Air X Holding), a company formed and

³ For example, exemptions may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or fewer) or indirect air carrier authority as a public charter operator pursuant to 14 CFR Part 380. An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a “direct air carrier.” An entity or person who is not a direct air carrier, but solicits in his or her own right members of the public to purchase air transportation, is an “indirect air carrier.”

⁴ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

⁵ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

⁶ From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation. Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

⁷ E.g., *OneSky Network, LLC, Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-6-1 (June 4, 2007).

⁸ E.g., *Imperial Jets, Inc., Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-4-7 (April 6, 2007).

registered in Malta.⁹ According to our records, Air X Aviation does not hold economic authority from the Department to engage directly or indirectly in air transportation.

Notwithstanding the lack of economic authority, an investigation of Air X Aviation's advertising practices by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Specifically, in September 2016, Air X Aviation advertised to charter brokers the launch of its operation via emails and LinkedIn.com messages. Air X Aviation advertised four aircraft (an Embraer 120, an Embraer 145, a Citation Excel, and a Challenger 850) originating in Florida. The aircraft advertised in the flyer were operated by Air X Charter, Ltd., the sister company of Air X Aviation, which holds a foreign air carrier permit. Nonetheless, the advertisement included a large "Air X" logo and listed the "aircraft that will soon be added to our fleet in the U.S." The advertisement did not contain a disclaimer indicating that Air X Aviation was not the operator of the aircraft or fleet, although such a disclaimer may not have cured the deceptive effect of the advertisements in general.

In addition, in November 2016, Air X Aviation transmitted advertisement flyers via email and LinkedIn.com messages, stating that "Air X [Aviation] has the following availability from Denver, CO for the month of December...[t]he aircraft can fly within the continental USA, Canada and the Caribbean." The same flyer also included an image of an aircraft with Air X livery. The Embraer 145 aircraft was, in fact, operated by a commuter air carrier, and like the September advertisement above, the other aircraft advertised in the flyer were operated by Air X Charter, Ltd. These flyers did not contain a disclaimer indicating that Air X Aviation was acting as an air charter broker and was not the operator of the aircraft or fleet, although such a disclaimer may not have cured the deceptive effect of the advertisements in general.

It is the Enforcement Office's view that the aforementioned advertisements made Air X Aviation appear to be a direct air carrier, which it is not. Thus, through these advertisements, Air X Aviation held out air transportation as a direct air carrier when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a).

Response

By way of mitigation and explanation, Air X Aviation was formed by Air X Holding in September 2016, for the primary purpose of marketing charter capacity on sister company Air X Charter, Ltd., a well-established European charter carrier. The advertising copy at issue represents Air X Aviation's first attempt to market capacity in the U.S. to charter brokers. Reference made to "Air X" was consistent, in Air X Aviation's view, with the understanding in the broker community that Air X Charter, Ltd., is the operator of the Air X fleet of aircraft.

⁹ Air X Holding also owns another subsidiary, Air X Charter, Ltd., which holds a foreign air carrier permit from the Department.

Air X Aviation fully believed that advertising on behalf of Air X Charter, Ltd. utilizing the name “Air X” would, in no way, mislead the broker community. However, once the Department informed Air X Aviation that clarification was necessary to distinguish between Air X Aviation, as the broker, and Air X Charter, Ltd., as the operator, proper modifications were made.

Decision

The Enforcement Office has carefully considered all of the information available to it, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Air X Aviation have reached a settlement of this matter. Without admitting or denying the violations described above, Air X Aviation agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80, and to the assessment of \$25,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by Air X Aviation and other air charter brokers and ticket agents.

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 the order as being in the public interest;
2. We find that Air X Aviation, Inc., violated 49 U.S.C. § 41101, as described above, by holding out air transportation without appropriate economic authority;
3. We find that Air X Aviation, Inc., violated 14 CFR 399.80(a), as described above;
4. We find that, by engaging in the conduct described in paragraphs 2 and 3, above, Air X Aviation, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order Air X Aviation, Inc., and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a);
6. We assess Air X Aviation, Inc., a compromise civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total penalty amount, \$12,500 shall be due and payable within 30 days from the date of issuance of this order. The remaining \$12,500 shall become due and payable immediately if Air X Aviation, Inc., violates the cease and desist provision in ordering paragraph

5, above, within one year of the issuance date of this order, or fails to comply with the payment provisions in this ordering paragraph; and

7. We order Air X Aviation, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the attachment to this order. Failure to pay the compromise penalty assessment as ordered shall subject Air X Aviation, Inc., to an 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 ten days after its service date, unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings