



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

Issued by the Department of Transportation
On the Nineteenth Day of May, 2009

**Holiday Airways Corporation d/b/a
Holiday Air**

Docket OST 2009-0001

**Violations of 49 U.S.C. §§ 41101 and
41712 and 14 CFR Parts 380 and 399**

Served May 19, 2009

CONSENT ORDER

This consent order concerns violations of certain consumer protection provisions of the Department's Public Charter regulations by Holiday Airways Corporation d/b/a Holiday Air, a Public Charter operator. Holiday Air failed to apply for and receive approval from the Department prior to advertising Public Charter flights, in violation of 14 CFR Part 380. Holiday Air also held out service on its Internet website in a manner that could confuse the public into believing it was an airline, in violation of 49 U.S.C. § 41101 and distributed advertisements that failed to comply with 14 CFR 399.84, the Department's rule on full fare advertising. These activities constituted unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712 and 14 CFR 380.27. This order directs Holiday Air to cease and desist from future violations and assesses a compromise civil penalty of \$50,000.

Public Charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of 14 CFR Part 380 are the rules designed to prevent economic harm to charter passengers. These rules include the requirement that no charter flight be advertised or sold unless there is in place an approved Public Charter prospectus, which evidences certain consumer protections, including financial security measures, required by Part 380. 14 CFR 380.25(a).

Holiday Air is a Miami-based Public Charter operator that conducts Public Charter service between San Juan, Puerto Rico (SJU) and Santa Domingo, Dominican Republic (SDQ) and between Orlando, Florida (MCO) and SJU. Prior to applying for and receiving Public Charter authority from the Department, Holiday Air advertised Public Charter service between SJU and SDQ, scheduled to commence on March 29, 2009. Holiday Air also promoted and advertised Public Charter service between MCO and SJU, scheduled to commence on May 23, 2009, prior to receiving Public Charter authority from the Department. Holiday Air advertised both of these Public Charter services on its website, www.holidayairways.com, and also advertised the SJU-SDQ charter service in

print advertisements. Holiday had not received Public Charter authority from the Department to hold out or conduct these flights prior to publishing these solicitations.¹ Holiday Air thus violated the provisions of Part 380 noted above. Holiday Air, by holding out Public Charter service before it filed for and received Public Charter authority in violation of 14 CFR Part 380, also violated 49 U.S.C. § 41101, which prohibits a company or person from engaging in air transportation without proper economic authority.

In addition to the violations discussed above, Holiday Air held itself out to the public in a manner that could have falsely created the impression that it is a direct air carrier. Specifically, Holiday Air's Internet website contained both animated and photographic images of airplanes bearing a Holiday Airways logo. Further, the homepage of the website stated, "[w]e specialize in the operation of Boeing transport category aircraft in both passenger and commercial applications for domestic and/or international use." The "About Us" portion of its website stated "[w]e currently operate Boeings 727s, 737s, and have several at our disposal," implying that Holiday Air has the authority to operate its own flights. Such misrepresentations by Holiday Air violate section 41101, and constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712 and 14 CFR 380.27.

Finally, to ensure that consumers receive accurate and complete information on available airfares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers and ticket agents state the full price to be charged the consumer. This requirement extends to advertisements on Internet sites. Under its enforcement case precedent, the Department has allowed certain government taxes and fees to be stated separately in fare advertisements, provided that the consumer is informed of these charges in a conveniently accessible text. Fees or charges may be listed separately, under Department precedent, provided that they are levied by a government entity, are not ad valorem in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. On Internet displays, these charges may be noted through a prominent link, placed adjacent to the stated fare, which takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.

During 2008 and 2009, Holiday Air advertised airfares both in print and on its Internet website that contained specific airfares for round trip charter air travel. For example, a Holiday Air print advertisement quoted round trip airfare SJU-SDQ for \$99 U.S., service beginning on March 29, 2009. However, that fare excluded additional taxes and fees. Moreover, the advertisement failed to provide appropriate notice of taxes and fees that

under Department precedent properly could be state separately from the advertised fare.² By failing to include Holiday Air-imposed fees in the advertised price that a consumer

¹ Holiday Air did not file its application for Public Charter authority to conduct the charter operations discussed above until March 10, 2009.

was required to pay, and failing to adequately disclose taxes and fees that may properly be stated separately from the advertised fare, Holiday Air violated 14 CFR 399.84 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

In mitigation, Holiday Air provided information indicating that it did not actually sell seats on any flights until after receiving its Public Charter authority. In addition, the Enforcement Office is not aware of any consumer complaints as a result of these violations. Holiday Air also promptly removed and revised its website upon being informed by the Enforcement Office of its investigation.

The Enforcement Office has carefully considered the information provided by Holiday Airways Corporation but continues to believe that enforcement action is warranted. Holiday Airways Corporation, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order, which includes a compromise civil penalty assessment of \$50,000. This order also directs Holiday Airways Corporation to cease and desist from further violations of 14 CFR Parts 380 and 399 and 49 U.S.C. §§ 41101 and 41712. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest as a deterrent to future violations by Holiday Airways Corporation, as well as by other similarly situated companies and persons.

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 Holiday Airways Corporation violated 14 CFR 380.25(a) by advertising Public Charter air transportation without having in place an approved Public Charter prospectus covering its Public Charter flights;
3. We find that, by engaging in the conduct and violations described above, Holiday Airways Corporation violated 49 U.S.C. § 41101 by engaging in air transportation without proper economic authority;
4. We find that Holiday Airways Corporation violated 49 U.S.C. § 41101 by holding itself out as a direct air carrier on its Internet Website without possessing appropriate economic authority;
5. We find that Holiday Airways Corporation violated 14 CFR 399.84 in print and Internet website advertisements by failing to state the entire fare to be paid;
6. We find that by engaging in the conduct described in paragraphs 2 through 5 above, Holiday Airways Corporation engaged in an unfair and deceptive practice and

² The \$99 advertised fare ended up costing a consumer more than \$200, a fact a consumer would not learn until the final step in the booking process.

unfair methods of competition in violation of 49 U.S.C. § 41712 and 14 CFR 380.27;

7. Holiday Airways Corporation and all other entities owned or controlled by or under the common ownership of Holiday Airways Corporation and its successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Parts 380 and 399;
8. Holiday Airways Corporation is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 through 6 above. Of this total penalty, \$25,000 shall be due and payable in five installments under the following schedule: \$5,000 is due and payable within 30 days of the effective date of this order, \$5,000 is due and payable by July 15, 2009, \$5,000 is due and payable by August 15, 2009, \$5,000 is due and payable by September 15, 2009, and \$5,000 is due and payable by October 15, 2009. The remaining \$25,000 will become due and payable immediately if Holiday Airways Corporation violates the order's cease and desist provision within one year following date of issuance of this order, or it fails to comply with the order's payment provisions, and any unpaid portion of the \$50,000 penalty shall become due and payable immediately;
9. Failure to pay the compromise penalty as ordered shall subject Holiday Airways Corporation to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
10. Payments 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to 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)

*An electronic version of this document is available
on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*