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

Issued by the Department of Transportation
On the 30th day of June, 2011

Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations

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

OST-2011-0003

Served June 30, 2011

CONSENT ORDER

This consent order concerns violations by Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations (collectively referred to as "Apple Vacations"), online ticket agents, 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 also separately directs Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC in their individual capacities to cease and desist from future violations of Part 257 and section 41712 and jointly and severally assesses them a $50,000 civil penalty.

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 Apple Vacations with section 257.5. During at least the latter half of 2010, Apple Vacations 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. 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. Apple Vacations' failure to properly disclose the existence of code-sharing arrangements and the names of the transporting carriers could have deceived consumers regarding the identity of the airline that was actually to operate the aircraft on which the consumer would be flying.

In mitigation, Apple Vacations states that the flight listings on its website that did not disclose code-share flights were due to a failure by its Global Distribution System ("GDS") provider to properly identify flights that involved code-share segments. Apple Vacations states that once it received notice of the code-share disclosure requirements, it promptly deleted from its website any code-share flights and it subsequently promptly brought its website into compliance with those requirements as specified in 49 U.S.C. §41712 and 14 CFR Part 257. Apple Vacations further states that during the relevant 12 month period, it received no passenger complaints regarding any failure to disclose the existence of code-sharing arrangements and that the vast majority of passengers booking travel through Apple Vacations involve: (i) international travel as opposed to domestic U.S. travel; and (ii) air transportation which does not involve any connecting code-share flights. Lastly, Apple Vacations states that it will continue to monitor its website to ensure that it discloses any code-share flights properly according to the information it receives from its GDS provider and/or the airlines.

We view seriously the failure of Apple Vacations 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, Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC, in their individual capacities, agree 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 joint and several assessment of $50,000 in compromise of potential civil penalties otherwise assessable against them. 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 Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations 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, Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;

4. We order Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations and all other entities owned or controlled by or under common ownership with Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations 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 jointly and severally assess Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations $50,000 in civil penalties 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, $25,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of the civil penalty amount, $25,000, shall become due and payable if, within one year of the date of issuance of this order, Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations may become subject to additional 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 Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations 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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