



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

Issued by the Department of Transportation
On the 5th day of April, 2011

AirTran Airways, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR 234.11**

Docket OST 2011-0003

Served April 5, 2011

CONSENT ORDER

This consent order is the result of an investigation by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) into the failure of AirTran Airways, Inc. (AirTran) to post flight delay information on its website in violation of 14 CFR Part 234 and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. This order directs AirTran to cease and desist from future similar violations of Part 234 and section 41712, and assesses the carrier a compromise civil penalty of \$30,000.

Applicable Law

Section 234.11(b) of the Department's regulation requires carriers reporting on time performance information, such as AirTran, to display flight delay data on its website for each domestic flight for which schedule information is available on its website, including code-share flights. More specifically, each reporting carrier must provide on its website the following information: (1) the percentage of arrivals that were on-time—i.e., within 15 minutes of scheduled arrival time; (2) the percentage of arrivals that were more than 30 minutes late; and, (3) the percentage of flight cancellations if 5 percent or more of the flight's operations were canceled in the month covered. The information must be provided in the initial listing of flights or by showing all of the required information via a prominent hyperlink in close proximity to each flight on the page with the initial listing

of flights. Reporting carriers that do not disclose performance data on their website are not in compliance with section 234.11. Violations of section 234.11 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Facts and Conclusions

The Enforcement Office review of AirTran's website and information provided by AirTran revealed that on-time performance data were not available to consumers visiting AirTran's website for a short period, which is a significant violation of the Department's on-time performance rule. The failure to display on-time performance data violates Part 234 and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, AirTran states that it takes its obligation to provide consumers with flight delay information seriously and is focused on full compliance with Part 234.11(b)'s requirements. AirTran points out that the Part 234.11(b) website information requirement is relatively new, having only become effective on April 29, 2010, and its data loading and display procedures put in place to implement the new requirement worked without incident until a server failed on December 16, 2010, causing the first incident. The carrier states that it repaired the server, and then the same equipment failed again, causing the January 18, 2011, incident. According to AirTran, the system alert program it installed after the December event immediately identified the January event and allowed the carrier to quickly fix the problem, after which it equipped multiple servers to accept the flight delay data and to be accessible by the website. AirTran states that, to ensure future compliance, it has implemented new monitoring and exception reporting procedures and has also put into place processes to detect immediately any errors in data load files during schedule changes and the addition of new flights.

Decision

We view seriously AirTran's failure to display flight performance information on its website as required by 234.11(b). Accordingly, after carefully considering all of the facts in this case, the Enforcement Office believes that enforcement action is warranted.

By this order, the Department finds that AirTran failed to post on-time performance information on its website, as required. In order to avoid litigation, without admitting or denying any violation AirTran agrees to settle this matter with the Enforcement Office through the issuance of this order directing it to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 234.11, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's requirements to post flight delay data by AirTran as well as by other reporting air carriers.

This order is issued under the authority in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that AirTran Airways, Inc., violated 14 CFR 234.11 by failing to display on-time performance information on its website as required;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, AirTran Airways, Inc. has engaged in an unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order AirTran Airways, Inc., and all other entities owned or controlled by, or under common ownership and control with AirTran Airways, Inc., their successors, affiliates, and assigns, to cease and desist from further similar violations of 14 CFR 234.11 and 49 U.S.C. § 41712;
5. We assess AirTran Airways, Inc., \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total assessed penalty, \$15,000 shall be due and payable within thirty days of the issuance of this order. The remaining \$15,000 shall be due and payable if AirTran Airways, 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 \$30,000 assessed penalty shall become due and payable immediately; and
6. We order AirTran Airways, Inc., to remit the payment in ordering paragraph 5, above, 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 shall subject AirTran Airways, 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

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