



**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 February, 2007

**IDM Corporate Aviation Services, LLC**

**Violations of 49 U.S.C. §§ 41101  
and 41712**

**Docket OST 2007-26781**

**Served February 5, 2007**

**CONSENT ORDER**

**Summary**

This consent order concerns violations of the Department's aviation licensing statute, 49 U.S.C. 41101 by IDM Corporate Aviation Services, LLC, (IDM). From May 2006 to August 2006, IDM operated a Boeing 737 aircraft in common carriage air service without having first obtained Departmental economic authority as required by section 41101. Moreover, IDM's unauthorized air transportation violated 49 U.S.C. § 41712, which prohibits air carriers, such as IDM, and other entities from engaging in unfair and deceptive practices and unfair methods of competition. This order directs IDM to cease and desist from such further unauthorized air transportation and assesses IDM a compromise civil penalty of \$120,000.

**Applicable Law**

Citizens of the United States<sup>1</sup> are required under 49 U.S.C. § 41101 to hold economic authority<sup>2</sup> from the Department, either in the form of a "certificate of public convenience

---

<sup>1</sup> A "citizen of the United States" means, *inter alia*, a partnership in which each partner is an individual who is a citizen of the United States or a corporation that is organized in the United States and that 1) meets certain specified numerical 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).

<sup>2</sup> Generally, economic authority is granted to large aircraft operators (i.e., operators of aircraft, such as the Boeing 737, that were originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds) in the form of a certificate of public

and necessity” or an exemption from the certificate requirement<sup>3</sup>, in order to engage directly or indirectly in air transportation. “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.<sup>4</sup> In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides to the public transportation by air between two points.<sup>5</sup>

Operating as a common carrier without the appropriate economic authority (i.e., a certificate or an exemption) from the Department violates 49 U.S.C. § 41101.<sup>6</sup> From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of that service, constitutes “engaging” in air transportation.<sup>7</sup> Furthermore, a carrier that does not hold authority to engage in common carriage may not perform common carriage operations that result from the holding out of air services by a third party, such as another air carrier or an air charter broker, agent, or affiliated company.<sup>8</sup>

---

convenience and necessity. Before granting economic authority, the Department must find a carrier to be “fit,” which entails a determination that the carrier is owned and controlled by U.S. citizens and has adequate financial resources, a competent management team, and a positive compliance disposition. This fitness requirement is a continuing one and the Department monitors “certificated” carriers to ensure their compliance. Certificated carriers must also meet certain Departmental economic rules, such as liability insurance requirements (14 CFR Part 205) and, with regard to charter service, escrow requirements to protect charterers’ funds and expectations (14 CFR 212.8 and 380.34). In addition, certificated carriers must receive safety certification from the Federal Aviation Administration (FAA) and comply with the appropriate set of associated operating rules prescribed by that agency.

Large aircraft operators that engage in common carriage without the appropriate DOT and FAA authorizations harm consumers by denying them the level of protection afforded by duly licensed carriers that have been found fit by the Department and are complying with the proper FAA safety regulations. In addition, such operators, whose regulatory compliance costs are lower, place duly licensed common carriers at a competitive disadvantage.

<sup>3</sup> For example, an exemption may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft designed for 60 passenger seats or less) or of indirect air carrier authority as an air freight forwarder pursuant to 14 CFR Part 296.

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

<sup>5</sup> See, e.g., *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5<sup>th</sup> Cir. 1993).

<sup>6</sup> See, e.g., *Contract Air Cargo, Inc., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2005-3-39 (Mar. 30, 2005).

<sup>7</sup> 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.

<sup>8</sup> See, e.g., *Principal Air Services, LLC, and David C. Bernstein, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2006-7-13 (Jul. 11, 2006).

Under Department enforcement case precedent, violations of section 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>9</sup>

### **Background**

On May 26, 2006, in anticipation of placing its executive-configured Boeing 737 aircraft (N64SW) on the Federal Aviation Administration (FAA) operations specifications of a carrier duly licensed by the Department, IDM entered into a “charter marketing agreement” with an air charter broker, Private Jet Services Group, Inc., (PJS).<sup>10</sup> Pursuant to the IDM-PJS charter marketing agreement, PJS, which holds itself out to the public as being able to arrange charter air transportation, entered as an agent on IDM’s behalf into a contract with a rock group to transport the group on its summer 2006 tour using N64SW. Shortly thereafter, PJS entered into another such contract on behalf of IDM with a foreign embassy to transport embassy personnel aboard N64SW. Ultimately, N64SW failed to be placed on the operations specifications of the duly licensed carrier and IDM itself operated the flights for the rock group and the foreign embassy.

IDM is a citizen of the United States organized under the laws of Nevada. IDM operates N64SW pursuant to 14 CFR Part 125, an FAA regulation reserved for non-common carriers engaged in commercial air services aboard U.S. registered aircraft with passenger seating configurations of 20 or more or maximum payload capacities of 6,000 lbs. or more.<sup>11</sup> IDM has never held economic authority from the Department to engage directly or indirectly in air transportation.

### **Conclusion**

Citizens of the United States, pursuant to 49 U.S.C. § 41101, may not lawfully provide or offer to provide transportation of passengers or cargo by air in the United States as a common carrier without first obtaining economic authority from the Department, either in the form of a “certificate of public convenience and necessity” or an exemption from the certificate requirement. A non-common carrier may not perform common carriage operations that result from the marketing efforts of a third party, such as another air carrier or an air charter broker, agent, or affiliated company. Notwithstanding these proscriptions, IDM, which did not hold economic authority, entered into a charter marketing agreement with PJS. Pursuant to the agreement, PJS then held out air transportation to the public aboard N64SW on IDM’s behalf. IDM itself then operated

---

<sup>9</sup> See, e.g., *SportsJet, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2003-12-23 (Dec. 29, 2003).

<sup>10</sup> PJS’s conduct in this matter is currently the subject of a separate investigation.

<sup>11</sup> 14 CFR 125.1 and 125.11.

the charter flights that PJS arranged. This constituted an unlawful air carrier operation by IDM in violation of 49 U.S.C. §§ 41101 and 41712.<sup>12</sup>

### **Mitigation**

In mitigation, IDM asserts the marketing of the flights at issue, beginning with the signing of the IDM-PJS marketing agreement, took place under IDM's former owner and that the purpose of the agreement, as stated therein, was to market N64SW once it had been placed on the operations specifications of a duly licensed direct air carrier. IDM's current owner states that, when he purchased IDM at the end of June 2006, he did not intend to be the operator of N64SW and that at no time did he ever intend to violate any Departmental regulation or statute.

IDM further notes that it is a small business concern with no full-time employees, no office, telephone, or any of the typical physical accoutrements of a business. Additionally, IDM states that it has ceased all use of the aircraft and terminated the charter marketing agreement with PJS. Lastly, IDM states that it has cooperated fully with the Department at all stages of this matter.

### **Decision**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously the violations of the Department's licensing requirements by IDM Corporate Aviation Services, LLC. After a careful examination of all of the available information, including that provided by the carrier, the Enforcement Office continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and IDM Corporate Aviation Services, LLC, have reached a settlement of this matter. Without admitting or denying the violations described herein, IDM Corporate Aviation Services, LLC, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 by engaging in common carriage directly or indirectly, and to an assessment of \$120,000 in compromise of potential civil penalties otherwise assessable. Of this total amount, \$60,000 shall be paid under the terms described below. The remaining \$60,000 shall be suspended for 15 months following the date of issuance of this order and then forgiven, unless IDM Corporate Aviation Services, LLC, violates this order's cease and desist, payment, or reporting provisions, in which case the entire unpaid amount shall become due and payable immediately and IDM Corporate Aviation Services, LLC, may be subject to further enforcement action. This compromise is appropriate in view of the nature and extent of the violations in question and serves the public interest. Moreover, it creates a deterrent to future air transportation operations without appropriate economic authority by

---

<sup>12</sup> We note that, from the standpoint of 49 U.S.C. § 41101, the holding out of air service, as well as the actual operation of that service, constitutes, "engaging" in air transportation. Therefore, the mere holding out of N64SW for charter by PJS on IDM's behalf violated section 41101 vis-à-vis IDM regardless of whether any customers were actually obtained as a result of the holding out.

IDM Corporate Aviation Services, LLC, as well as by other similarly situated persons or other entities.

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 the order as being in the public interest.
2. We find that IDM Corporate Aviation Services, LLC, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority.
3. We find that by engaging in the conduct described in paragraph 2, above, IDM Corporate Aviation Services, LLC, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order IDM Corporate Aviation Services, LLC and all other entities owned or controlled by, or under common ownership with IDM Corporate Aviation Services, LLC, and their successors and assignees to cease and desist from further similar violations of 49 U.S.C. §§ 41101 and 41712.
5. We order IDM Corporate Aviation Services, LLC, to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the date of issuance of this order, a sworn statement from a responsible company official listing each of the entities transported by IDM Corporate Aviation Services, LLC, in the preceding 12 months.
6. We assess IDM Corporate Aviation Services, LLC, a compromise civil penalty of \$120,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total, amount \$60,000 shall be due and payable on March 5, 2007. The remaining \$60,000 shall be suspended for 15 months following the date of issuance of this order and then forgiven unless IDM Corporate Aviation Services, LLC, violates this order's cease and desist, reporting, or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and IDM Corporate Aviation Services, LLC, may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject IDM Corporate Aviation Services, LLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act.
7. We order IDM Corporate Aviation Services, LLC, to pay the compromise civil penalty assessed in ordering paragraph 5, above. 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. The wire transfers 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 ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

**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>