



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

Issued by the Department of Transportation  
On the Twenty-Second day of November 2011

**SkyWest Airlines, Inc.**

**Docket OST-2011-0003**

**Violations of 49 U.S.C. § 41712**

**Served November 22, 2011**

**CONSENT ORDER**

This consent order concerns violations by SkyWest Airlines, Inc., (SkyWest) of the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712, for creating and distributing advertisements that failed to properly provide notice that SkyWest would be the operator of the advertised air service. By this order, the Department finds that SkyWest facilitated the publication of these noncompliant advertisements, directs SkyWest to cease and desist from future similar violations and assesses SkyWest \$40,000 in civil penalties.

Section 257.4 of the 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 practice in violation of 49 U.S.C. § 41712 unless, in conjunction with the holding out or sale, the advertiser follows certain notice requirements, including those contained in 14 CFR 257.5(d). The specific terms of section 257.5(d) require that print advertisements, published in the United States for service in a city-pair market that is provided under a code-sharing arrangement, shall “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 that SkyWest created and distributed to airports advertisements that failed to properly disclose the existence of code-sharing arrangements. Specifically, such advertisements created by SkyWest identified the trade name of SkyWest’s code-share partners as the service provider but failed to identify SkyWest as the actual operator of such flights. SkyWest created and distributed these advertisements to airports with the understanding that those airports would publish such advertisements. SkyWest’s role in facilitating the publication of these advertisements could have resulted in consumers

being deceived regarding the identity of the airline that was actually to operate the aircraft on which the consumers would be flying. As such, SkyWest violated 49 U.S.C. § 41712.

In mitigation, SkyWest states that it has no advertising contracts in place with any of the airports at issue in this order. SkyWest states that it offered graphic art and slogans for airport use in “fly local” campaigns funded by communities participating in the Essential Air Service program and it did not place, or pay for the materials to be placed, in any form of free or commercial media. SkyWest explains that it did not charge the airports for the creation or use of the promotional materials and did not exercise any control over how, or even if, the airports published such materials. SkyWest further explains that when an airport chose to publish the promotional materials it did so using its own budget, on its own volition and without obligation to notify or obtain approval from SkyWest. SkyWest states, however, that most airports did not publish the promotional materials in question and when publication occurred the distribution was extremely limited, appearing only in a brochure for a snowmobile rally and on a banner at an ice rink.

The Department considers proper disclosure of the operating carrier in advertisements involving code-share relationships to be a serious matter. The Enforcement Office has carefully considered all the evidence in this matter, including the explanation and mitigation offered by SkyWest and believes that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and SkyWest have reached a settlement of this matter. Without admitting or denying the violation described above, SkyWest consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and to the assessment of \$40,000 in compromise of potential civil penalties otherwise assessable against it. 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 requirements.

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 SkyWest Airlines, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712 by creating and distributing advertisements published by third parties that failed to identify SkyWest Airlines, Inc., as the operating carrier;
3. We order SkyWest Airlines, Inc., and all other entities owned or controlled by or under common ownership with SkyWest Airlines, Inc., and its successors and assignees to cease and desist from further similar violations of 49 U.S.C. § 41712;

4. We assess SkyWest Airlines, Inc., \$40,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 above. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$20,000, shall become due and payable if, within one year of the date of issuance of this order, SkyWest Airlines, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case SkyWest Airlines, Inc., may become subject to additional enforcement 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 SkyWest Airlines, Inc., 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

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