



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

Issued by the Department of Transportation
on the 14th day of February, 2003

**BOSTON-MAINE AIRWAYS CORP.
D/B/A PAN AM CLIPPER CONNECTION**

Violations of 49 U.S.C. § 41712

Docket OST 2003-14194

Served February 14, 2003

CONSENT ORDER

This consent order concerns certain public holding-out practices engaged in by Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection (Boston-Maine) through its published schedules, its website, and its 1-800 telephone number that are believed by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) to constitute unfair and deceptive practices in violation of 49 U.S.C §41712.

Until recently, all of the schedule listings in the Official Airline Guide (OAG) for Boston-Maine's operations were offered under the "PN" code of Pan American Airways Corp. (Pan Am). Although Boston-Maine and Pan Am are affiliated air carriers, they are separate companies that do not have a code-share arrangement. While Boston-Maine was authorized by the Department to hold itself out under the trade name "Pan Am Clipper Connection," it was not authorized to hold itself out under the name "Pan Am" or to use Pan Am's "PN" code.

Furthermore, although Boston-Maine and Pan Am maintained separate websites, all reservations for both carrier's flights were made on the Pan Am website. Passengers using the Boston-Maine website to book a flight were automatically linked to the Pan Am website without any notice being given to the passenger that the booking was being made on the Pan Am website.¹ In addition, certain connecting flights in which each carrier provided one leg of the transportation were shown on the Pan Am website as being

¹ In addition, the 1-800 telephone number listed on Boston-Maine's website was actually the telephone number of the joint Pan Am and Boston-Maine Reservation Center. However, a Boston-Maine caller was not informed of that fact. It would also be unclear to a passenger as to which carrier's contract of carriage would apply to air transportation on Boston-Maine.

"operated jointly by Pan Am and Boston-Maine Airways" rather than being separately identified by the carrier operating each flight segment.

In mitigation, Boston-Maine asserts that its use of the "PN" designator code, and its shared 1-800 telephone Reservations Center and Internet reservation website with its affiliated sister carrier, Pan Am, was based on its good faith belief that such joint use was permissible between affiliated carriers, provided that the identity of the carrier operating specific flights was always made clear to the traveling public. Although Boston-Maine believes that this information was made clear to the traveling public, as soon as the concerns of the Enforcement Office to that practice were brought to its attention, Boston-Maine states that it took immediate action to resolve those concerns. Specifically, Boston-Maine (i) obtained its own IATA designator code (E9*), (ii) modified the flight schedule listing published by Boston-Maine in the OAG, (iii) revised the Internet website to more clearly identify and distinguish Boston-Maine's reservations and flights from those of Pan Am, and (iv) amended the script used by Reservations Center personnel to identify which carrier's flights were the desired subject of the incoming telephone call from potential customers.

Boston-Maine states that in all other communications with, and holding-out practices to, the traveling public, including printed and electronic tickets, advertising, brochures and promotional materials, letterhead, press releases, airport signage and aircraft liveries, and employee uniforms, Boston-Maine and Pan Am have always clearly differentiated between the two carriers as separate and independent, but affiliated companies. Boston-Maine respectfully suggests that the absence of even a single consumer complaint regarding any alleged confusion between its service and that of Pan Am stands as testimony to the effectiveness of the companies' respective differentiation efforts.

We view seriously Boston-Maine's conduct as described above. We have carefully considered the facts of this case, including the company's explanation, cooperation, and prompt corrective actions, and continue to believe enforcement action is necessary. Both the Enforcement Office and Boston-Maine, in order to avoid litigation and without Boston-Maine's admitting or denying the alleged violations, agree to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 similar to those described above, and to the assessment of \$40,000 in compromise of potential civil penalties. Of this penalty amount, \$20,000 shall be paid according to the schedule set out in the ordering paragraphs *infra*; the remaining \$20,000 shall be suspended for one year following the service date of this order, and then forgiven unless the carrier violates the order's cease and desist provision within that period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$40,000 penalty shall become due and payable immediately, and Boston-Maine may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the matters dealt with herein, and Boston-Maine's cooperation in addressing them promptly, and it serves the public interest. This settlement, moreover, will serve as a deterrent to future deceptive holding out to the public by Boston-Maine as well as other companies.

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 by engaging in the conduct described above, Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
3. Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection is ordered to cease and desist from further similar violations of 49 U.S.C. § 41712;
4. Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, above. Of that penalty amount, \$20,000 shall be due and payable within 30 days of the service date of this order. The remaining \$20,000 shall be suspended for one year following service of this order, and then forgiven, unless Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection violates this order's cease and desist provisions within the suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$40,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; and
5. 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 transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and 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)

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

(1) To 021030004	(2) Type		
(3) From	(4) Ref.	(5) Amount	
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

1. **Treasury Department Code—Provided**
2. **Type Code—To be provided by sending bank.**
3. **Sending Bank's Code—(ABA#)**
4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
5. **Amount—Include dollar sign and punctuation including cents digits.**
6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
- 7/8. **Entire line provided precisely as shown.**
9. **Entire line provided precisely as shown.**
10. **Enter name of air carrier or other payor (as shown on order).**
11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."**

NOTE: Questions about these instructions should be directed to Ms. Betty Barber, Office of Financial and Budget, General Accounting Branch, AMZ-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125, phone: (405) 954-1194, fax: (405) 954-3930. To ensure proper credit, notify Ms. Barber when each payment is made.