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US DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

SatoTravel, Inc. Violations of 14 C.F.R. Part 257, and 49 U.S.C. § 41712 Enforcement Proceeding	Docket OST-04-17124 Served:

CONSENT ORDER

On February 17, 2004, the Office of Aviation Enforcement and Proceedings filed a third-party enforcement complaint against SatoTravel, Inc., alleging violations of 14 C.F.R. Part 257.[1] Under Part 257, air carriers and ticket agents must, in response to consumer inquiries regarding flights operated pursuant to a code-share arrangement, disclose the existence of the code-share arrangement prior to accepting a reservation and must indicate the corporate name of the code-share carrier that will operate the service. According to the formal complaint, SatoTravel, a large travel agency which specializes in serving corporate and government clients, failed to make the appropriate disclosures in a number of calls placed by Department investigators. Failure to provide the appropriate disclosure of code-share arrangements constitutes, in addition, a violation of 49 U.S.C. § 41712, which proscribes unfair and deceptive practices and unfair methods of competition. This order approves a settlement agreement reached by the parties to the proceeding.

The specific terms of 14 C.F.R. § 257.5(b), covering disclosure requirements in direct oral communications with members of the public, require that agents inform inquirers of the actual carrier operating the flight when the consumer seeks information regarding a flight in which the service is operated pursuant to a code-share agreement.[2] The disclosure requirement applies when the service is operated by a carrier other than that whose designator code would appear on the ticket stock. The ticket agent must also advise the consumer of any other name under which the operating carrier holds itself out to the public, such as a system or network

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[1] The parties agree that the official name of SatoTravel, Inc. is "Scheduled Airlines Traffic Offices, Inc.," hereinafter referred to as "SatoTravel."

[2] The text of 14 C.F.R. 257.5(b) reads as follows: "In any direct oral communication in the United States with a prospective consumer and in any telephone calls placed from the United States concerning a flight that is part of a code-share arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which the service is held out to the public."

name. These oral notifications, moreover, must be provided prior to the consumer's booking a reservation.

According to the Enforcement Office's complaint, Department investigators in the summer of 2003 and again in February 2004 placed calls to SatoTravel call centers inquiring about itineraries which involved code-share service, some of which were for domestic travel while others included foreign destinations. In responding to the great majority of these calls, SatoTravel agents, the complaint alleged, failed to provide the corporate name of the operating carrier or state any other name by which the transporting carrier holds out service to the public. The results of the survey, according to the complaint, demonstrated substantial noncompliance on the part of SatoTravel with this aspect of Part 257's requirements.

In mitigation, SatoTravel states that it is clear from the record in this matter that the investigation was not initiated by any consumer complaint or by any member of the public concerning compliance with the code-share disclosure requirements. Furthermore, SatoTravel states the record indicates that no consumer was actually deceived nor did SatoTravel gain any competitive benefit or advantage as a result of the alleged violations.

The Department has interpreted the regulations, the Enforcement Office believes, as requiring disclosure of the identity of the transporting carrier at the first mention of the carrier's name. However, SatoTravel asserts that section 257.5(b) clearly imposes on the travel agent no obligation to disclose code-share arrangements prior to a request by a consumer that a flight be booked. SatoTravel believes this distinction is important because it receives many calls from travelers which are not related to actually booking transportation. Many calls are purely informational in nature in which the caller has merely inquired whether certain flights are available or for information on which carrier is a government contract carrier that the traveler is obligated to use. Based on its review, some of the test calls made in the Enforcement Office's investigation appear to SatoTravel to be just such calls for information regarding the availability of certain flights. Moreover, SatoTravel states, citing Alaska v. U.S. Department of Transportation, 868 F.2d 441 (D.C. Cir. 1989), that the U.S. Court of Appeals for the District of Columbia Circuit has established that the Department cannot, in the guise of an interpretation of its regulations, adopt new substantive requirements.

As an additional legal matter, SatoTravel believes the regulations require clarification as to who the consumer is, specifically as it applies to a structured travel management program. According to SatoTravel, the regulations are not clear whether the consumer is the traveler or a separate purchaser of travel. SatoTravel believes the distinction is important. According to SatoTravel, the travel it provides is usually for official travel or business travel that is paid, in some cases directly by, and in all cases, ultimately, by the federal agency or corporate entity under contract. The federal agency or the corporate entity is thus the purchaser or the consumer and these consumers have negotiated air agreements for discounted fares and/or preferred airlines. The key issues in such agreements, SatoTravel asserts, are the discount amounts and the flights, including code-share flights, on which the discount is available. (In this case, according to SatoTravel, all of the calls were answered by a call center that deals exclusively with federal agencies and were identified to the call center employee as agency callers by a "whispertone" system.)

SatoTravel further contends that it is generally immaterial to the federal government or the corporation whether code-shares themselves are involved. The company states that government travelers cannot choose to fly on a non-contract carrier for reasons of personal preference – the justification for the disclosures required by Part 257. Since the individual travelers are required to use the preferred carriers designated by the federal government or corporate entity, according to SatoTravel, there is no deception or harm caused by any failure to fully comply with the Department's code-share disclosure requirements. SatoTravel states that under these circumstances, the failure to provide the code-share information does not rise to the level of an "unfair or deceptive practice or unfair method of competition." Moreover, SatoTravel, citing American Airlines, Inc. v. North American Airlines, Inc., 351 U.S. 79, 83-84 (1956), states that for the same reason the enforcement action is not in the "public interest."

SatoTravel also notes that in 1984 the Civil Aeronautics Board decided that it need not extend to SatoTravel the rules for computerized reservation systems that were adopted at that time. SatoTravel states that the Board refrained from doing so because "from a consumer perspective, the United States Government is, for all practical purposes, the sole customer of such offices and has the leverage to require impartial CRSs in them" (49 Fed. Reg. 32540, 32549 (Aug. 15, 1984)). SatoTravel contends that the same logic applies to its current operations vis-à-vis government agencies and code-sharing.

Nonetheless, SatoTravel states in response to DOT's investigation that it has instituted processes and procedures in its call centers and other offices to monitor its compliance with the code-share disclosure requirements. SatoTravel states that recurrent training will be periodically scheduled. SatoTravel has also instituted in the call centers where such capabilities exist a review of agent compliance with the code-share disclosure requirements during phone calls with consumers as part of its quality call monitoring program.

Finally, SatoTravel states that the Department's enforcement complaint "double counts" alleged violations by treating a failure to disclose the corporate name of the operating carrier in a code-share arrangement and a failure to disclose the network name of the carrier as separate violations of Part 257. SatoTravel states that the regulation provides no warning that non-compliance with these requirements will be treated as separate violations, and that there is no precedent for such "double counting." Moreover, SatoTravel states that such a requirement would place an impossible burden on SatoTravel, because in certain cases a code-sharing arrangement – be it domestic or foreign – will not make use of a network name, such as in the case of code-sharing between Alaska Airlines and Horizon Air.

The Enforcement Office maintains that formal enforcement action with the issuance of a consent cease and desist order and the assessment of civil penalties is warranted in this instance. Disclosure of code-share information in a travel agent's contacts with consumers, the Enforcement Office maintains, is essential to avoid consumer deception. For disclosure to be effective, the Enforcement Office argues, it needs to occur when the agent mentions a flight in response to a specific consumer inquiry including inquiries that may be "informational." The consumer should not have to indicate an interest in booking a flight to obtain information that could well determine which flight he or she would select. The Enforcement Office asserts that in

several consent orders the Department has embraced the view that a reservation agent should not await a consumer's explicit request for a reservation before disclosing the existence of a code-share relationship.[3] Nor does the Enforcement Office accept that there is any ambiguity, as SatoTravel contends, in the requirements of Part 257 when, as in this case, the consumer is an employee of a government agency or private firm that contracts with SatoTravel to provide travel management services. The Enforcement Office contends that the individual employees of SatoTravel's clients are entitled to the same level of disclosure in making plans for business travel as they would receive with respect to their personal travel. According to the Enforcement Office, while the choices available to government employees in official travel are limited by contractual commitments to specific carriers in individual markets, some choice is available and in certain instances government employees may select a particular flight on the basis of whether or not the carrier is providing service through a code-share partner. This would particularly be the case, the Enforcement Office argues, in large metropolitan markets in which several airports with potentially several contract carriers might be available for official travel or where service is provided over multiple connecting points by the contracting carrier.

The Enforcement Office agrees with SatoTravel that it "double-counted" certain violations, citing as separate violations failures to reveal a network name and to state the corporate name of the operating carrier. The Enforcement Office states that since 14 C.F.R. § 257.5 requires each type of disclosure, two violations occur if neither disclosure is given unless, of course, the code-share arrangement does not involve a network name.

The Deputy General Counsel and SatoTravel have reached a settlement of this matter. In order to avoid litigation and without admitting or denying the alleged violations, SatoTravel agrees to the issuance of this order to cease and desist from future violations of 14 C.F.R. § 257.5 and 49 U.S.C. § 41712, in providing reservations information to members of the public, and to an assessment of $75,000 in compromise of potential civil penalties of which $37,500 shall be payable as follows: $22,500 shall be due and payable within 45 days of the service date of this order; up to another $15,000 of the penalty may be offset by verified additional training costs for reservations agents at SatoTravel and its affiliated travel companies.[4] The remaining one-half of the $75,000 compromise penalty shall be suspended for one year and 60 days following the service date of this order and then forgiven, provided that SatoTravel complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's code-share disclosure regulations and section 41712 by SatoTravel, as well as by other vendors of air transportation.

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[3] See Northwest Airlines, Inc., DOT Order 99-3-1, March 3, 1999; Delta Air Lines, Inc., DOT Order 99-3-2, March 3, 1999; Trans World Airlines, Inc., DOT Order 95-3-8, March 3, 1995; Air New Zealand, Ltd., Order 94-6-17, June 10, 1994.

[4] SatoTravel is one of several travel-related companies owned by Navigant International, Inc. The training costs that are eligible for offset against up to $15,000 of the assessed penalty must be training costs at any affiliated Navigant travel company in excess of those incurred in the year prior to the service date of this order covering the Department's code-share disclosure rules.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;[5]

2. We find that SatoTravel violated 14 C.F.R. § 257.5(b) by failing to advise of the existence of code-share arrangements and the corporate name of the carrier actually performing the service as appropriate during inquiries to its reservations center;

3. We find that by engaging in the conduct described in paragraph 2, above, SatoTravel violated 49 U.S.C. § 41712;

4. SatoTravel and all other entities owned or controlled by, under common ownership and control with SatoTravel and their successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 C.F.R. § 257.5(b) and 49 U.S.C. § 41712;

5. SatoTravel is assessed $75,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, on the following terms: $22,500 shall be due and payable 45 days after the service date of this order and up to another $15,000 may be offset by expenditures on training for personnel of SatoTravel and its affiliated travel companies owned by Navigant International, Inc. regarding compliance with 14 C.F.R. Part 257. SatoTravel shall submit a certified statement from an appropriate company official setting out these training expenses in detail within 30 days of the end of one year following the service date of this order. To the extent that the total training expenses are less than $15,000, the deficit shall be due and payable at that time. The remaining one-half of the $75,000 compromise penalty shall be suspended for one year and 60 days following the service date of this order and then forgiven, unless SatoTravel fails to comply with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and SatoTravel may be subject to further enforcement action; and

6. Payments 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 SatoTravel 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 is issued under the authority contained in 14 C.F.R. § 385.11(d) and shall

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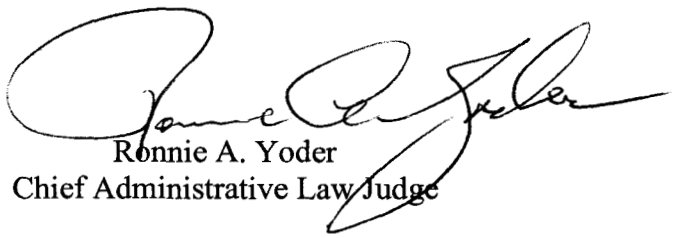
[5] This order contains changes agreed to by the parties in a prehearing telephone conference on May 4, 2004. See Northwest Airlines, Inc., Docket No. OST-01-10598, p. 6, n. 8 (Feb. 11, 2002); Airlift Group, Inc., and Richard Bernard, Order 96-4-24, p. 3, n. 4 (Apr. 11, 1996); Express One International, Inc., Order 94-3-34, p. 4, n. 8 (Mar. 21, 1994); Regal Air, Ltd., Order 93-3-33, p. 3, n. 4 (Mar. 25, 1993); Hermens/Markair Express, Inc., Order 89-12-9, p. 4, n. 3 (Dec. 5, 1989); Sunworld International Airways, Inc., Order 88-10-21, p. 5 (Oct. 12, 1988); Tourlite International, Inc., Order 87-6-6, p. 4 (June 3, 1987); Emerald Tours, Ltd., Order 85-9-56, p. 4 (Sept. 27, 1985).

become a final order of the Department 30 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.



Ronnie A. Yoder
Chief Administrative Law Judge

(SEAL)

Attachment - Service List

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