

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

Issued by the Department of Transportation
On the 2nd day of April, 2008

Compania Mexicana de Aviacion, S.A. de C.V.

Violations of 49 U.S.C. §§ 41310, 41705 and 41712

Docket OST 2008-0031

Served: April 2, 2008

CONSENT ORDER

This order concerns violations of the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705,¹ which prohibits discrimination in air travel against individuals with disabilities. Since the apparent ACAA violations occurred in foreign air transportation they constitute violations of 49 U.S.C. § 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation. ACAA violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. This order directs Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana) to cease and desist from future violations of the ACAA and assesses a compromise civil penalty of \$75,000 for such violations.

BACKGROUND

The investigation by the Enforcement Office into Mexicana's compliance with the ACAA involves six informal complaints filed with the Enforcement Office and one complaint filed with Mexicana by complainants, identified here as "A", "B", "C", "D", "E" and "F,"² individuals with different types of disabilities. Each complainant was required to travel with an attendant as a condition of travel on Mexicana, in effect denying boarding to the complainants if they did not agree to Mexicana's condition of travel. All six complaints involve passengers who were traveling between the United States and a foreign point.

¹ In April 2000, the ACAA was extended to foreign air carriers pursuant to the Wendell H. Ford Aviation Investment & Reform Act for the 21st Century. (Air-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000)

² The identification of the individuals is unnecessary for the purposes of this consent order and is being withheld for privacy reasons.

Ms. A traveled unaccompanied on Mexicana from Morelia, Mexico to Los Angeles, California on June 16, 2003, but was denied boarding on a return flight on the basis of her disability. Ms. A, an amputee who is unable to walk unassisted, uses a wheelchair for mobility. She also has full use of one of her legs and is able to hop.³ However, when Ms. A attempted to make a reservation for a return flight on Mexicana, she was told by Mexicana personnel that she would not be allowed to board any Mexicana flight without being accompanied by someone who could carry her because she would not be able to walk to the bathroom. As a result, Ms. A. flew back to Mexico on another carrier.

Mr. B was scheduled to travel from Santa Barbara, California to Morelia, Mexico with a connecting flight in Los Angeles on Mexicana on December 15, 2003. Mr. B, who is blind, arrived at the Los Angeles airport and attempted to check-in for his flight to Morelia but was advised by Mexicana personnel that he would not be accepted for travel because of his disability. Mexicana later stated to Mr. B that he was required to travel with a companion for his own safety and for the safety of the other passengers should the flight encounter an emergency.

On or about February 23, 2003, Ms. C attempted to purchase a ticket for her friend, who is deaf, to travel from Chicago, Illinois to Mexico City, Mexico on Mexicana. Ms. C was advised by Mexicana personnel that Mexicana does not accept a deaf individual for travel on its flights unless accompanied by an adult who does not have a disability or by a trained dog.⁴

Ms. D was scheduled to travel on Mexicana from Chicago, Illinois to Del Bajio, Mexico on September 19, 2005. Ms. D has a mobility disability and uses a wheelchair since she is unable to walk long distances. When Ms. D arrived at the airport in Chicago, she was advised by Mexicana personnel that she would be unable to travel on an unaccompanied basis as a matter of safety. Mexicana personnel apparently offered to find a passenger on Ms. D's flight who could act as Ms. D's attendant; however, Ms. D stated that she was independent, could walk, and she refused the attendant. Ms. D traveled unaccompanied the following day on another carrier without incident.

Ms. E was scheduled to travel with her four-year-old son on Mexicana from Los Angeles, California to Zacatecas, Mexico on August 5, 2006. Ms. E is a paraplegic⁵ and uses a wheelchair for mobility. On the date of her flight, Ms. E packed her son's and her bags, loaded them into her car, and drove to Los Angeles International Airport. However, when she attempted to check-in she was advised by Mexicana employees that she would be unable to travel without an

³ Mexicana Airlines failed to provide Ms. A the use of an aisle chair to board her flight from Mexico to Los Angeles which resulted in Ms. A having to hop to her seat. The failure to provide enplaning assistance is a violation of the ACAA and Mexicana has been warned that similar future violations may lead to further enforcement action against the carrier.

⁴ Mexicana later clarified to the Department of Transportation that it does accept individuals with hearing impairments on an unaccompanied basis and that inaccurate information was provided to Ms. C.

⁵ Paraplegics generally have full use of their arms and hands and would under normal circumstances be able to assist in their own evacuation.

attendant. Ms. E refused to fly with an attendant and returned home with her son. A month prior to this incident, Ms. E had traveled without an attendant on another carrier.

Mr. F who uses a wheelchair was scheduled to travel on Mexicana flight 306 on January 15, 2006, from Miami to Cancun. Mr. F checked in for the flight, received a boarding pass, pushed his wheelchair to his aircraft seat and transferred from his wheelchair to his aircraft seat on his own. Mr. F states that he was told shortly thereafter that he would have to deplane because Mexicana does not allow a person who uses a wheelchair to travel unaccompanied. Mr. F deplaned.

Based on the serious nature of these complaints, the Enforcement Office conducted an investigation of the incidents involving passengers "A," "B," "C," "D," "E," and "F." Each complainant was required to travel with an attendant as a condition of travel on Mexicana and each was effectively denied boarding because he or she did not agree to travel with an attendant. All six complaints involve passengers who were traveling between the United States and a foreign point, so the flights in question were covered by the Air Carrier Access Act.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has determined that Mexicana's decision to deny boarding to the above-referenced complainants violates the ACAA, because Mexicana incorrectly determined that the complainants could not travel without an attendant. In effect, Mexicana improperly denied boarding to the complainants in violation of the ACAA.

ANALYSIS

The complaints that formed the basis of this case involve incidents occurring after April 5, 2000, the date the applicability of the ACAA was extended to foreign airlines by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21). In May 2001, the Enforcement Office gave notice that it intends to use the provisions in 14 CFR Part 382 (the Department's rule implementing the ACAA, which does not by its terms address foreign air carriers except in one narrow area involving the reporting of disability-related complaints received by foreign air carriers) as guidance in investigating any complaints it receives of ACAA non-compliance by foreign air carriers.⁶ In that regard, section 382.35 provides that a carrier must not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation unless the carrier determines that an attendant is essential for safety. More specifically, an attendant must not be required for a passenger with a mobility impairment if that person can *assist* in his or her own evacuation of the aircraft.

In the above-referenced cases, identified as Complainants "A," "B," "C," "D," "E," and "F," Mexicana plainly failed to ask questions sufficient to enable it to render a determination regarding whether Complainants "A," "B," "C," "D," "E," and "F" could have assisted in their own evacuation. Merely asking whether the individual would be traveling with an attendant or

⁶ The Department issued a proposed rule to extend the applicability of Part 382 to foreign air carriers on November 4, 2004. The Department has reviewed the public comments on the proposed rule and intends to complete this rulemaking by the end of this year. See OST-2004-19482 at <http://dms.dot.gov> and 69 FR 64363.

whether he/she could walk, see or hear without assistance is insufficient to determine whether an attendant is necessary for safety purposes. Mexicana summarily and abruptly denied travel to Complainants “A,” “B,” “C,” “D,” “E,” and “F,” and left them with no option but to fly with an attendant or arrange a flight on another carrier.

Further, Mexicana’s interpretation and its application of policies reflected in both its Passenger Service Bulletin 1109 (Bulletin) and its General Operation Manual (Manual) constitute unlawful discrimination in violation of 49 U.S.C. §§ 41705 and 41310, the latter of which prohibits unreasonable discrimination in foreign air transportation. The violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712.

Therefore, under the circumstances described above, Mexicana’s interpretation and application of its policies, described above, and its refusal to transport Complainants “A,” “B,” “C,” “D,” “E,” and “F,” based solely on their disability, are violations of the ACAA and unlawful discrimination in violation of 49 U.S.C. §§ 41705 and 41310. The violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712.

In mitigation, Mexicana states the safe transport of all its passengers is paramount. Furthermore, it asserts that it is also its goal and policy to avoid any type of discrimination against any persons including those with disabilities in accordance with applicable law. As a Mexican corporation and international carrier, Mexicana states that it is subject to and must comply with various international legal and regulatory regimes, including the Mexican Civil Aviation Law, the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, and the provisions of the U.S. Air Carrier Access Act (ACAA), in addition to the laws of several countries within Central America and South America. According to Mexicana, even though all these laws were passed to protect passengers with special needs and conditions, they are not identical in their definitions of qualified disabled passengers, safety risks, and other items. As a result, Mexicana states that it is confronted with difficult compliance issues stemming from the various international regulatory regimes to which it is subject. Mexicana believes its treatment of its passengers complies with each of these regimes.

After carefully considering all the facts in this matter, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation and without admitting or denying the alleged violations described above, Mexicana has agreed to settle this matter with the Enforcement Office. Under this order, Mexicana agrees to revise its policies concerning travel with an attendant as reflected in both its Bulletin and Manual, quickly provide notice to its employees explaining the legal requirements of when it is and is not appropriate to require that a passenger with a disability be accompanied by an attendant, cease and desist from future violation of the Air Carrier Access Act, 49 U.S.C. § 41705, and 49 U.S.C. §§ 41310 and 41712 and accept the imposition of a \$75,000 assessed civil penalty. A portion of that civil penalty will be offset if Mexicana establishes a “Disability Advisory Council,” including hiring an “Accessibility Liaison” to assist the council in its work.

The Enforcement Office believes that the assessment of a civil penalty of \$75,000 in this instance is warranted in light of the nature and extent of Mexicana's violations. Nothing in this order is intended to preclude Mexicana or any other foreign air carrier from the legitimate exercise of its discretion to refuse to transport disabled passengers for valid safety reasons. In this case, however, each of the incidents described above involved individuals who could assist in their own evacuation. Therefore, Mexicana's refusal to transport them was not warranted. This order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and other federal statutes prohibiting unreasonable discrimination and to ensure proper carriage and treatment of passengers with disabilities.

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 Mexicana violated the Air Carrier Access Act (49 U.S.C. § 41705), 49 U.S.C. § 41310 and 49 U.S.C. § 41712, by either applying or misapplying its Bulletin and Manual and imposing as a condition of travel that Complainants "A," "B," "C," "D," "E" and "F" fly with an attendant due to the passengers' disability, when no *bona fide* safety reason existed, in effect denying Complainants boarding unless they agreed to Mexicana's unlawful demand;
3. We order Mexicana to cease and desist from further violations of 49 U.S.C. §§ 41705, 41310 and 41712;
4. We order Mexicana to revise its policy as reflected in both Mexicana's Passenger Service Bulletin 1109 (Bulletin) and its General Operation Manual (Manual) to make it consistent with the ACAA so that passengers with mobility impairments who are able to assist in their own evacuation of the aircraft in case of an emergency are permitted to travel on Mexicana's flights without being accompanied by an attendant. We order Mexicana to submit its revised Bulletin and Manual to the Mexican Direccion General de Aeronautica Civil (DGAC) within 30 days of the service date of this order and to place them in effect within 30 days of their approval by the DGAC.
5. We order Mexicana to provide notice of its attendant policy to all its public contact employees that deal with flights operating to and from the U.S. within 30 days of the service date of this order.
6. Mexicana is assessed \$75,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order as follows:
 - a. \$10,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and

- b. up to \$65,000 of the assessed penalty shall be credited to Mexicana subject to paragraphs 10 through 12 of this order, for funds expended toward the establishment, within two years of the service date of this order, of a Disability Advisory Council, including hiring an Accessibility Liaison to assist the council in its work. The council shall be comprised of passengers with disabilities and/or representatives of disability advocacy organizations, who among other things will provide Mexicana with written reports regarding its policies and practices affecting air travelers with disabilities and actions that may be needed to correct any deficiencies discovered.
7. Payments required by this order 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. Wire transfers shall be executed in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Mexicana to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.
8. Within 60 days of the service date of this order, Mexicana shall provide the Enforcement Office with a copy of its revised Passenger Service Bulletin 1109 and its revised General Operation Manual that it submitted to DGAC to clarify that passengers with mobility impairments who are able to assist in their own evacuation of the aircraft should be permitted to travel on Mexicana’s flights without being accompanied by an attendant. Within 60 days of the approval of Mexicana’s revised Bulletin and Manual by DGAC, Mexicana shall provide a sworn and certified statement from an appropriate company official testifying that to the best of that official’s knowledge both its revised Bulletin and Manual have replaced the previous versions wherever these documents appear (e.g., employee handbooks).
9. Within 60 days of the service date of this order, Mexicana shall provide the Enforcement Office with a copy of the notice that it provided to its public contact employees explaining the legal requirements of when it is and is not appropriate to require that a passenger with a disability be accompanied by an attendant, and a sworn statement from an appropriate company official testifying that to the best of that official’s knowledge the notice has been provided to all of Mexicana’s public contact employees that deal with flights operating to and from the U.S.
10. Within 26 months of the service date of this order, Mexicana shall provide the Enforcement Office with supporting documentation verifying the cost of the offset listed in paragraph 6 above. The documentation must contain a detailed explanation of the method used by Mexicana to determine the cost of the offset, and a sworn statement from an appropriate company official testifying that the descriptions and documentation are true and complete to the best of that official’s knowledge and that the official has made a reasonable inquiry to establish the accuracy of the statement.
11. To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditure of the \$65,000 offset as described in ordering paragraphs 6 and

10, that amount shall become due and payable within 30 days of the date of the certification required by paragraph 10.

12. The offset described in paragraph 6b. may be amended with the approval of the Enforcement Office. If Mexicana intends to seek a change in the type of improvement made, it must notify and obtain approval from the Enforcement Office 15 days prior to the date documentation is due pursuant to ordering paragraph 10.

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)

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