



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

Issued by the Department of Transportation
on the 10th day of April, 2015

FlyBlade, Inc.

**Violations of 49 U.S.C. §§ 41101 and 41712
and 14 CFR Part 399**

Docket OST 2015-0002

Served April 10, 2015

CONSENT ORDER

This consent order concerns unauthorized air transportation by FlyBlade, LLC, subsequently incorporated as FlyBlade, Inc., (FlyBlade) in violation 49 U.S.C. §§ 41101 and 41712. This order also concerns FlyBlade’s violations of 14 CFR 399.80, which prohibits certain practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. This order directs FlyBlade to cease and desist from future violations of these provisions and assesses the company a compromise civil penalty of \$80,000.

Applicable Law

In order to engage directly or indirectly in air transportation, a citizen of the United States¹ is required to hold economic authority from the Department of Transportation (Department) pursuant to 49 U.S.C. § 41101, either in the form of a “certificate of public convenience and necessity” or in the form of an exemption from the certificate requirement, such as those applicable to direct air carriers² operating as air taxis under

¹ A “citizen of the United States” includes a corporation organized in the United States that (1) meets certain specified 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).

² “Direct air carrier” means a certificated commuter or foreign air carrier, air taxi operator registered under Part 298, or a Canadian charter air taxi operator registered under Part 294, that directly engages in the

14 CFR Part 298 and to indirect air carriers³ acting as public charter operators under 14 CFR Part 380. This authority is separate and distinct from any safety authority required by the Federal Aviation Administration. The holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation and, if done without the requisite economic authority, violates 49 U.S.C. § 41101.⁴ Violations of section 41101 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.⁵

In addition, as ticket agents pursuant to 49 U.S.C. § 40102(a)(45), air charter brokers may not create the false impression that they are direct air carriers when they are not. Such conduct violates 14 CFR 399.80(a). Violations 14 CFR 399.80, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.⁶

Background

FlyBlade specializes in providing air transport services. It does not hold economic authority from the Department nor does it own or operate aircraft. FlyBlade utilizes the services of a Part-135 on-demand air carrier, Liberty Helicopters, Inc., (Liberty) to operate flights for consumers requesting air transportation.

An investigation by the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that for a period of time in 2014, FlyBlade held itself out as a direct air carrier and engaged in unauthorized air transportation as an indirect air carrier. Specifically, FlyBlade’s website and smartphone application contained language, statements, and images of aircraft painted in the company’s logo that could have led a consumer to reasonably conclude that FlyBlade was a direct air carrier. Through marketing strategies such as these, FlyBlade created the erroneous impression that it was a direct air carrier.

In addition, FlyBlade operated a system through its smartphone application where the first person to book an on-demand charter (“lead passenger”) contracted with FlyBlade for the entire cost and capacity of the aircraft. The lead passenger’s price on future flights would then be reduced if other paying customers agreed to join the flight. In essence, FlyBlade ran a system whereby it, in effect, became an unauthorized indirect air

operation of aircraft under a certificate, authorization, permit or exemption issued by the Department. 14 CFR 380.2.

³ “Indirect air carrier” means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier. 14 CFR 380.2.

⁴ *E.g., Jet One Jets, Inc.*, Order 2008-3-2 (March 4, 2008).

⁵ *E.g., I-Jet Aviation, LLC*, Order 2012-10-20 (October 19, 2012).

⁶ *E.g., Luxury Air Jets, Inc.*, Order 2010-2-17 (February 19, 2010).

carrier. By engaging in air transportation without the requisite economic authority from the Department, FlyBlade violated 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80.

Mitigation

In mitigation, FlyBlade states that it does not believe that any of the above circumstances warrant enforcement action and asserts that its business model should be viewed as permissible. In addition, FlyBlade believes that it has a positive compliance disposition and states that it did not intend any violations. FlyBlade states that once it learned that its business model might not be viewed as permissible, it promptly sought to have discussions with the Enforcement Office. FlyBlade emphasizes that it cooperated fully with the Enforcement Office's review and when it learned that the Enforcement Office did not accept its innovative business model, it immediately took steps to bring its business model squarely within the boundaries of the Department's rules.

Decision

The Enforcement Office has carefully considered the information provided by FlyBlade, but continues to believe that enforcement action is warranted. The Enforcement Office and FlyBlade have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, FlyBlade consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80, and to the assessment of \$80,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by FlyBlade and other entities.

This order is issued under the authority contained in 14 CFR Part 1.

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 FlyBlade, Inc., violated 14 CFR 399.80(a) and 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that by violating 14 CFR 399.80(a) and 49 U.S.C. § 41101 as described in ordering paragraph 2 above, FlyBlade, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;

4. We order FlyBlade, Inc., its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with FlyBlade, Inc., its successors, its affiliates, and its assigns to cease and desist from further violations of 14 CFR 399.80(a) and 49 U.S.C. §§ 41101 and 41712;
5. We assess FlyBlade, Inc., \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$40,000 shall be due and payable within thirty (30) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$40,000 shall become due and payable immediately if, within one year of the date of issuance of this order, FlyBlade, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case FlyBlade, Inc., may be subject to additional enforcement action for violation of this order; and
6. We order FlyBlade, Inc., to pay the penalty through Pay.gov 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 shall subject FlyBlade, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failing 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:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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