



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

Issued by the Department of Transportation
On the Twentieth day of November, 2013

BestCare EMS, Ltd.

**Violations of 49 U.S.C. §§ 41101 and
41712 and CAB Order 83-1-36**

Docket OST 2013-0004

Served November 20, 2013

CONSENT ORDER

This consent order concerns the unlawful holding out of direct air transportation by BestCare EMS, Ltd., (BestCare) an indirect air carrier specializing in air ambulance services. The conduct in question exceeded the scope of the economic authority in Civil Aeronautics Board (CAB) Order 83-1-36 and violated 49 U.S.C. § 41101, the Department's economic licensing requirement for air carriers. Those violations also constituted an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs BestCare to cease and desist from such further violations and assesses BestCare a compromise civil penalty of \$15,000.

Applicable Law

As background, in addition to applicable Federal Aviation Administration (FAA) requirements, in order to engage in air transportation as a direct¹ or indirect air carrier,²

¹ A "direct air carrier" is a person or other entity that provides air transportation and that has control over the operational functions involved in providing that transportation.

² An "indirect air carrier" is a person or other entity that engages indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

citizens of the United States³ must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. § 41101, or an exemption from section 41101. In 1983, the CAB, which held jurisdiction over the economic aspect of aviation licensing prior to the Department, issued Order 83-1-36, a blanket exemption from the certificate requirement to allow entities to operate as indirect air carriers to the extent necessary to hold out, arrange, and coordinate the operation of air ambulance services,” provided that they meet certain conditions.⁴ While this exemption permits entities that are not duly licensed direct air carriers to sell air transportation in their own right, it does not permit such entities to hold themselves out to the public in a manner that would reasonably create the impression that they are direct air carriers when they are not. Such misrepresentations violate section 41101 and Order 83-1-36, and constitute an unfair and deceptive trade practice and unfair method of competition in violation of section 41712.

Facts and Conclusions

BestCare provides air ambulance services worldwide. It arranges medical air transportation and employs the emergency medical technicians and paramedics who accompany patients on flights that are operated by direct air carriers, pursuant to contracts with BestCare. BestCare holds neither the necessary economic authority from the Department, nor the corresponding safety authority from the FAA required of a direct air carrier and thus may not operate aircraft or hold out that it does so.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) found numerous improper statements and representations on BestCare’s website that implied that BestCare had the authority to operate its own flights. For example, the “License and Insurance” page had a hyperlink that stated “FAA 135 Air Taxi Certificate.” Below this, it stated “Copies of Certification and Insurance available upon Request.” These statements strongly implied that BestCare held an FAA-issued Air Carrier Certificate and exercised operational control over flights. Furthermore, BestCare’s “Medical Aircraft” page stated “More Info about the BestCare Air Medical Aircraft Fleet” and gave specifications for a fleet of aircraft, when no such fleet existed. The “FAQ” section had a hyperlink to this non-existent fleet of aircraft that stated “Read more about the BestCare Air Ambulance Fleet.” These statements portrayed BestCare as operating its own, proprietary fleet of aircraft. As explained above, such statements and representations violate CAB Order 83-1-36 and 49 U.S.C. §§ 41101 and 41712.

Mitigation

³ A “citizen of the United States” includes a corporation organized in the United States that: (1) meets certain numerical 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).

⁴ *Air Ambulance Operators, Blanket Exemption*, Order 83-1-36, 99 C.A.B. 801 (1983). At the time of the order, the certificate requirement was in section 401 of the Federal Aviation Act, Pub. L. No. 85-726, 72 Stat. 731 (1958).

In mitigation, BestCare reiterates its commitment to professional integrity and compliance with the Department's regulations and applicable laws. While BestCare neither admits nor denies that it engaged in wrongful conduct, BestCare explains that it modeled its website and other advertising materials after websites and advertising materials used by other indirect air carriers specializing in air ambulance services. BestCare states that any violations on its part were completely unintentional and inadvertent.

BestCare states that it has not received any consumer complaints regarding the violations alleged in this consent order and explains that upon notification from the Department and that it proactively and voluntarily took immediate remedial actions to bring its website and advertising materials into full compliance with the Department's regulations. BestCare states that it has cooperated fully with the Department throughout its investigation and continues to maintain a positive and proactive working relationship with Department officials.

Decision

The Enforcement Office has carefully considered the information provided by BestCare, but continues to believe that enforcement action is warranted. In order to avoid litigation, BestCare and the Enforcement Office have reached a settlement of this matter. BestCare agrees to the issuance of this order, which includes a compromise civil penalty assessment of \$15,000, and agrees to cease and desist from further violations of CAB Order 83-1-36 and 49 U.S.C. §§ 41101 and 41712. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest as a deterrent to future violations by BestCare, as well as by other indirect air carriers.

This order is issued under the authority contained in 49 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 BestCare EMS, Ltd., violated CAB Order 83-1-36, as described above, by holding itself out as a direct air carrier without possessing the appropriate economic authority;
3. We find that BestCare EMS, Ltd., violated 49 U.S.C. § 41101, as described above, by holding itself out as a direct air carrier without possessing the appropriate economic authority;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, BestCare EMS, Ltd., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order BestCare EMS, Ltd., and all other entities owned or controlled by or under the common ownership of BestCare EMS, Ltd., and its successors and assignees, to cease and desist from further violations of CAB Order 83-1-36 and 49 U.S.C. §§ 41101 and 41712;
6. We order BestCare EMS, Ltd., to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the service date of this order, copies of all advertising material, including print-outs of all versions of its Internet website, that BestCare EMS, Ltd., has caused to be published since the service date of this order;
7. We assess BestCare EMS, Ltd., \$15,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 through 4, above. Of this total penalty amount, \$7,500 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of any unpaid civil penalty shall become immediately due and payable if, within one year of the date of this order, BestCare EMS, Ltd., violates this order's cease and desist or payment provision, in which case BestCare EMS, Ltd., may become subject to additional enforcement action for any violation of the order; and
8. We order BestCare EMS, Ltd., 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 BestCare EMS, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

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