



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

Issued by the Department of Transportation  
On the Nineteenth Day of February, 2010

**Luxury Air Jets, Inc.**

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

**Docket: DOT-OST-2010-0005**

**Served: February 19, 2010**

**CONSENT ORDER**

This consent order concerns violations by Luxury Air Jets, Inc., (LAJ) of 49 U.S.C. § 41101, the Department's aviation licensing requirements, and 49 U.S.C. § 41712, which prohibits ticket agents and air carriers from engaging in unfair and deceptive trade practices and unfair methods of competition. This order also concerns LAJ's separate and distinct violation 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 LAJ to cease and desist from such further violations and assesses LAJ a compromise civil penalty of \$40,000.

**Applicable Law**

Citizens of the United States<sup>1</sup> are required under 49 U.S.C. § 41101 to hold economic authority<sup>2</sup> from the Department, either in the form of a "certificate of public convenience and necessity" or in the form of an exemption<sup>3</sup> from the certificate requirement, to

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<sup>1</sup> 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).

<sup>2</sup> This authority is separate from any safety authority required by the Federal Aviation Administration.

<sup>3</sup> For example, exemptions may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or fewer) or indirect air

engage directly or indirectly in air transportation. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air.<sup>4</sup> In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides public transportation by air between two points.<sup>5</sup>

Air charter brokers that do not have economic authority may not hold out air transportation. Such conduct constitutes “engaging” in air transportation and violates 49 U.S.C. § 41101.<sup>6</sup> Under the Department enforcement case precedent, violations of section 41101 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.<sup>7</sup> Furthermore, 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 misrepresentations violate 14 CFR 399.80(a) and, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.<sup>8</sup>

## Background

LAJ is a New York corporation that specializes in air charter broker services. It does not hold economic authority from the Department. It does not own or operate aircraft.

An investigation of LAJ’s Internet advertising practices by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Specifically, notwithstanding a statement in

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carrier authority as a public charter operator pursuant to 14 CFR Part 380. An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a “direct air carrier.” An entity or person who is not a direct air carrier, but solicits in his or her own right members of the public to purchase air transportation, is an “indirect air carrier.”

<sup>4</sup> 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

<sup>5</sup> *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5<sup>th</sup> Cir. 1993).

<sup>6</sup> From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation. Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

<sup>7</sup> E.g., *OneSky Network, LLC, Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-6-1 (June 4, 2007).

<sup>8</sup> E.g., *Imperial Jets, Inc., Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2007-4-7 (April 6, 2007).

fine print at the bottom of the “About Us” page identifying LAJ as an air charter broker, LAJ’s Internet website at [www.luxuryairjets.com](http://www.luxuryairjets.com) contained language that reasonably could have led a consumer to conclude that LAJ is a direct air carrier, which it is not. For example, LAJ’s website made numerous references to “our aircraft,” “our corporate private jets,” “flying with us,” and “our private charter flights.” Such statements can reasonably be read to mean that LAJ is a direct air carrier. Through these and other statements on its Internet website, LAJ held out direct air transportation when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a).

Furthermore, the Enforcement Office’s investigation also revealed that LAJ’s Internet website contained numerous false statements about its memberships and/or affiliations with various organizations. Specifically, LAJ stated that it was “a member on [sic] good standing of ARG/US, NATA, and NATA First.” When contacted by the Enforcement Office, those organizations stated that LAJ was not one of their current members. LAJ’s statement regarding its membership with ARG/US is particularly troubling because ARG/US is not a membership-based organization. LAJ also stated that it was member in good standing with the “National Defense Transit Authority”, an organization whose existence neither LAJ nor the Enforcement Office could substantiate. LAJ’s false representations regarding its memberships with actual or non-existent organizations constitute a separate and distinct violation of 49 U.S.C. § 41712.

### **Decision**

The Enforcement Office has carefully considered all of the information available to it, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Luxury Air Jets, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Luxury Air Jets, Inc., agrees 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 \$40,000 in compromise of potential civil penalties otherwise assessable against it. Of this total amount, \$20,000 shall be paid under the terms described below. The remaining \$20,000 shall be paid if Luxury Air Jets, Inc., violates this order’s cease and desist or payment provisions over the 12 months following the issuance date of this order, in which case the entire unpaid amount shall become due and payable immediately and Luxury Air Jets, Inc., may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by Luxury Air Jets, Inc., and other air charter brokers and ticket agents.

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 Luxury Air Jets, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that Luxury Air Jets, Inc., violated 14 CFR 399.80(a), as described above, by misrepresenting itself as a direct air carrier;
4. We find that, by engaging in the conduct described in paragraphs 2 and 3, above, Luxury Air Jets, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. We find that, by misrepresenting its memberships and affiliations with various organizations, Luxury Air Jets, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
6. We order Luxury Air Jets, Inc., to submit to the Office of Aviation Enforcement and Proceedings 30 days prior to the one-year anniversary of the service date of this order, copies of all advertising material, including print-outs of any e-mail solicitations and all versions of its Internet website, that Luxury Air Jets, Inc., has caused to be published since the service date of this order;
7. We order Luxury Air Jets, Inc., and all other entities owned and controlled by or under common ownership with Luxury Air Jets, Inc., and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a);
8. We assess Luxury Air Jets, Inc., a compromise civil penalty of \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, and 5, above. Of this total penalty amount, \$20,000 shall be due and payable in four equal installments to be paid on March 20, 2010, May 20, 2010, July 20, 2010, and September 20, 2010. The remaining \$20,000 shall be due and payable if, within one year following the issuance date of this order, Luxury Air Jets, Inc., violated the cease and desist provisions of this order, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately. Failure to pay the penalty as prescribed in ordering paragraph 9, below, shall subject Luxury Air Jets, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order; and

9. We order Luxury Air Jets, Inc., to pay the compromise civil penalty assessed in ordering paragraph 8, above. 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;

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 initiative.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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