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DOT Issues Code-Sharing Disclosure Guidance (Jan. 2011)

The U.S. Department of Transportation (“DOT”) is authorized to prohibit an “unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.” 49 U.S.C. § 41712. DOT has long required that the schedule display and online sale of air transportation for which the airline “designator code is not that of the transporting carrier” include “an asterisk or other easily identifiable mark” and disclose “the corporate name of the transporting carrier and any other name under which that service is held out to the public.” 14 C.F.R. § 257.5(a). This requirement, applicable to carriers as well as travel agencies and other ticket agents, is intended to help consumers determine the identity of code-share operators.¹

DOT has not, however, previously provided specific guidance as to the precise point in the online booking process at which a consumer must be informed that all or part of the itinerary will be via a code-share flight and has permitted sellers of air transportation to use hyperlinks and rollovers (created by “rolling” a mouse or pointer over text to generate a small pop-up window) to disclose this information in internet displays.

In January of 2011 DOT did issue such guidance,² prompted by recent changes to 49 U.S.C. § 41712(c). Specifically, Congress amended the statute to require that (1) any seller of tickets (i.e., ticket agents, air carriers, foreign air carriers) disclose the identity of the operating carrier for each segment of a code-sharing itinerary, and (2) for internet offers, such disclosure must appear “on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.”³



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT’s rules on the advertising and sale of air transportation.

For further information regarding the matters discussed in this article, please contact:

David M. Endersbee
(202) 973-7935
dmendersbee@zsrlaw.com

Jonathon H. Foglia
(202) 973-7932
jhfoglia@zsrlaw.com

Jol A. Silversmith
(202) 973-7918
jasilversmith@zsrlaw.com

Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.,
Washington, D.C. 20006.
Telephone: (202) 298-8660
Fax: (202) 342-0683
www.zsrlaw.com

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¹ Part 257 of DOT’s regulations also applies to the disclosure of long-term wet leases.

² “Guidance on Disclosure of Code-share Service Under Recent Amendments to 49 U.S.C. § 41712” (Jan. 10, 2011). DOT’s guidance was published in the Federal Register on January 14, 2011 (76 Fed. Reg. 2744).

³ Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub.L. No. 111-216, Title II, § 210, 124 Stat. 2362, Aug. 1, 2010.

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DOT's guidance affirms the plain reading of the statutory changes: "To be 'easily visible,' the [code-sharing] disclosure should be on the same screen as the itinerary and immediately adjacent to that itinerary and to each alternative itinerary, if applicable."

DOT also eliminated the previously-permissible mechanisms for making code-share disclosures online:

Nothing in section 41712(c) would permit code-share disclosure to be made through a hyperlink or rollover. Code-share service may be highlighted by an asterisk or other mark, but should still include appropriate text on the itinerary display that is easily visible to a viewer, identifying the operating carrier by its corporate name.

In addition to this responsibility to ensure complete code-sharing disclosures on the first page of results, DOT issued a warning to air carriers that they are responsible for their agents and may be the subject of enforcement action for noncompliance by their agents. DOT also issued a stern warning to the broader air travel industry:

We are also taking this opportunity to warn ticket agents, in particular global distribution systems, which may be assisting travel agents to establish airline ticket sales websites, that they should not be providing those agents website software that is not in compliance with the Department's advertising requirements, in general, or code-share disclosure requirements, in particular. Such actions that facilitate violations of Department rules or section 41712 may themselves violate 41712, and we will not hesitate to institute enforcement action against ticket agents in such situations, if appropriate.

In this regard it is well to recall that DOT is authorized to impose civil penalties of up to \$27,500 per violation, per day for each day the violation continues. 49 U.S.C. § 46301.

DOT did recognize that sellers may require time to make adjustments to their displays and software to comply with its guidance and has provided a 60 day window for such changes, during which DOT will not take enforcement action concerning these new requirements set forth in its January 2011 guidance. During this period DOT will, however, continue to enforce its existing code-sharing disclosure policies as set forth in 14 C.F.R. Part 257.

A sample code-sharing itinerary with a correct identification of a fictional regional carrier operating the flight is as follows:

\$200 per person, including taxes
Tuesday, February 1
XYZ Airlines 9999
Operated by ABC Airlines d/b/a XYZ Connection
Depart: Grand Rapids (GRR) 6:00AM
Arrive: Albany (ALB) 8:05AM
Nonstop – Economy – 2hr 5min – A319

To avoid public and expensive enforcement action, online sellers of air transportation are advised to consult with legal counsel to ensure that their displays fully comply with this guidance and related DOT advertising regulations and policy.

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Washington, D.C. 20006.
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