



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

Issued by the Department of Transportation
on the **17th day of February, 2004**

SatoTravel, Inc.

**Violations of 14 CFR Part 257
and 49 U.S.C. § 41712**

Enforcement Proceeding

Served February 17, 2004

Docket OST-04-17124

**NOTICE OF ENFORCEMENT PROCEEDING AND
PROPOSED ASSESSMENT OF CIVIL PENALTIES**

The complaint of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (AEP) that accompanies this notice alleges that SatoTravel, Inc. (Sato), violated the requirements of 14 CFR 257.5, a Department rule requiring that ticket agents disclose code-sharing arrangements during telephone reservation inquiries from members of the public, and 49 U.S.C. § 41712, a statutory provision which prohibits unfair and deceptive trade practices and unfair methods of competition. Section 257.5 requires that in any direct oral communication with a prospective consumer, a ticket agent must, regarding flights operated pursuant to a code-sharing agreement, disclose both the corporate name of the carrier actually operating the service and any other name, such as a network name, under which that service is held out to the public.¹ Sato is a large travel agency whose clients include several major corporations and government agencies.

The Department rule regarding code-share disclosure is intended to ensure that consumers receive accurate information on which to base their air travel plans. The disclosure of code-sharing arrangements, by informing consumers of the carrier that will actually provide the air service during their prospective travel, allows consumers to exercise effectively their preferences according to their own prior experience or on other bases. In

¹ Section 257.5(b) states: “*Oral notice to prospective consumers.* In any direct oral communication in the United States with a prospective consumer and in any telephone calls placed from the United States concerning a flight that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.”

the past, the Enforcement Office has taken a number of actions to enforce the Department's code-sharing disclosure requirements. (See, *e.g.*, USAirways, Inc., Violations of 49 U.S.C. 41712, 14 CFR 257.5(d), and 14 CFR 399.84, Order 2003-9-26; Swain Australia Tours, Violations of 14 CFR Part 257 and 49 U.S.C. 41712, Order 2001-6-17; Northwest Airlines, Inc., Code-Sharing Violations, Order 99-3-1; Delta Air Lines, Inc., Code-Sharing Violations, Order 99-3-2; US Airways, Order 2001-5-32; Trip.com, Order 2001-6-3).

In a telephone survey conducted in June 2003 by the Department's Aviation Consumer Protection Division, Sato's agents made the full, appropriate disclosures as required by section 257.5 in only two cases among 44 test calls involving domestic markets. With respect to international code-share markets, compliance was somewhat better, with appropriate disclosures occurring in 3 of 6 test calls. Partial disclosure, in which either the corporate name of the operating carrier or the network name of the carrier was disclosed, occurred in a number of additional cases. Even after prompting by the investigator, in only several cases did the agents respond with at least a partial disclosure of the code-sharing arrangement. This record clearly indicates a serious failure of compliance on the part of Sato.

Most troubling, Sato's compliance did not reach acceptable levels after the Enforcement Office advised the company of the problems it had found. In this regard, on February 10, 2004, investigators from the Aviation Consumer Protection Division made further test calls to the travel agency to determine the extent of compliance with the rule's disclosure provisions. Of 10 calls placed to Sato, in only 4 instances did the investigators receive the full disclosure of code-sharing arrangements as required by section 257.5.²

Based on the informal investigation undertaken by the Enforcement Office of Sato's disclosure practices with respect to code-sharing arrangements among airlines, there are reasonable grounds, in my opinion, to believe that Sato has violated provisions of 14 CFR Part 257 and 49 U.S.C. § 41712 and that an investigation of the alleged violations is in the public interest. Accordingly, pursuant to Rule 407 of the Department's Rules of Practice, 14 CFR 302.407, I institute a formal enforcement proceeding to investigate the allegations set forth in the attached complaint.

Under 49 U.S.C. § 46301 prior to recent statutory amendments effective December 12, 2003, Sato was subject to an assessment of civil penalties of up to \$2,500 for each violation

² In total, Sato violated 14 CFR 257.5 and 49 U.S.C. § 41712 on 96 occasions during the two surveys. For domestic markets, the agent must identify both the carrier name and the network name in response to an inquiry; for international markets, since no network names are used, only the carrier name of the code-share partner need be disclosed. Thus on each domestic call in which neither carrier nor network name was identified, 2 violations occurred. In the 2 surveys, there were 45 calls with respect to domestic markets in which neither carrier nor network was identified (39 in the first survey, 6 in the second) and 3 calls in which only the network name was given. International markets were included in only the first series of calls and, as stated above, only during 3 calls was the appropriate disclosure given. The 3 instances in which no disclosure occurred in the international markets involved only a single violation each since the agent had to give only the carrier name.

of 49 U.S.C. § 41712 or of consumer protection regulations adopted by the Department, including 14 CFR Part 257. Vision 100—Century of Aviation Reauthorization Act (Pub.L. 108-176; 117 Stat. 2490, December 12, 2003) raised the applicable civil penalty provision pertinent to Sato to \$25,000 for each violation after the date of enactment.

The Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in the enforcement proceeding instituted by this notice. Under Rule 407(d) of the Department's Rules of Practice, 14 CFR 302.407(d), SatoTravel is notified that it may be liable for civil penalties of \$500,000, reflecting violations of 14 CFR Part 257 and 49 U.S.C. § 41712. We are also notifying Sato that it may be liable for an additional penalty of \$2,500 for each additional similar violation revealed in the course of this investigation which occurred prior to December 12, 2003, and \$25,000 for each violation occurring after that date, pursuant to 42 U.S.C. § 46301

This notice and the accompanying complaint will be served on Sato. Under Rule 408 of the Department's Rules of Practice, 14 CFR 302.408, Sato is required to file, within 15 days, an answer to the complaint admitting or denying specifically and in detail each allegation of the complaint, and a response to the proposed assessment of civil penalties, specifically presenting any matters the respondent intends to rely on in opposition to or in mitigation of such civil penalties.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

CERTIFICATE OF SERVICE

I certify that on February 17, 2004, I served the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties and the related Complaint on the Respondent by first class mail addressed to the Respondent's address in Arlington, Virginia.

Rosalind A. Knapp
Deputy General Counsel

By:

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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D. C.**

SatoTravel, Inc.

**Violations of 14 CFR Part 257
and 49 U.S.C. § 41712**

Enforcement Proceeding

Served February 17, 2004

Docket OST-04-17124

ENFORCEMENT COMPLAINT

1. SatoTravel, Inc. (Sato), is a ticket agent and seller of air transportation through an Internet site (www.satotravel.com), through telephone reservation centers, as well as through other channels, and has its principal place of business at 4601 N. Fairfax Drive, Arlington, Virginia, 22203.
2. As a ticket agent (See, 49 U.S.C. § 40102 (a)(40)), Sato is subject to the provisions of 14 CFR Part 257, a Department rule requiring the disclosure of code-sharing arrangements in airline sales transactions, as well as 49 U.S.C. § 41712, a statutory provision which prohibits unfair and deceptive trade practices and unfair methods of competition.
3. The failure by Sato to disclose code-sharing relationships during telephone contacts between its reservations agents and potential customers violates the explicit requirements of section 257.5(b), which states that ticket agents must advise consumers, "before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public."
4. The failure by Sato to provide required code-sharing disclosures in telephone contacts with consumers also constitutes an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.
5. On at least 84 occasions in June 2003, Sato reservation agents failed, in response to reservation inquiries regarding flights operated pursuant to code-sharing

arrangements, to state the corporate name of the carrier actually providing the transportation, or the network name of that carrier, and in several instances they disclosed neither name.

6. On at least 12 occasions in February 2004, Sato reservation agents failed, in response to reservation inquiries regarding flights operated pursuant to code-sharing arrangements, to state either the corporate name of the carrier actually providing the transportation, or the network name of that carrier, and in several instances they disclosed neither name.
7. By engaging in the conduct described in paragraphs 5 and 6 *supra*, Sato violated the requirements of 14 CFR 257.5 and 49 U.S.C. § 41712 on at least 96 occasions.
8. Under 49 U.S.C. § 46301, as amended by section 222 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21, Pub. L. 106-181; 114 Stat. 61; April 5, 2000), the Department may assess, for violations occurring in June 2003, civil penalties of up to \$2,500 for each violation of 49 U.S.C. § 41712 and the Department's regulations (including 14 CFR Part 257), rules or orders, related to certain specified statutory provisions, including 49 U.S.C. § 41712. For violations occurring after December 12, 2003, Vision 100—Century of Aviation Reauthorization Act (Pub.L. 108-176; 117 Stat. 2490, December 12, 2003) raised the applicable civil penalty provision from \$2,500 to \$25,000 per violation.
9. Under 49 U.S.C. § 46101(a)(4), the Department may order an air carrier to cease and desist from violating Department orders or rules, including 14 CFR Part 257, and certain statutory provisions, including 49 U.S.C. § 41712.

WHEREFORE, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings requests the Department of Transportation to:

- A. Find that SatoTravel, Inc., has violated 14 CFR 257.5 by failing to disclose properly the existence of code-share arrangements in response to consumer telephone inquiries seeking flight information;
- B. Find that SatoTravel, Inc., by engaging in the conduct described in paragraph A *supra*, has violated 49 U.S.C. § 41712 and has been engaged in an unfair and deceptive trade practice and unfair method of competition;
- C. Find that SatoTravel, Inc., engaged in the unlawful conduct described in paragraphs A and B, *supra* on at least 84 occasions in June 2003, each of which violation is subject to a civil penalty of up to \$2,500 pursuant to 49 U.S.C § 46301;

- D. Find that SatoTravel, Inc., engaged in the unlawful conduct described in paragraphs A and B, *supra* on at least 12 occasions in February 2004, each of which violation is subject to a civil penalty of up to \$25,000 pursuant to 49 U.S.C § 46301, as revised by Vision 100, Pub.L. 108-176; 117 Stat. 2490, December 12, 2003;
- E. Order SatoTravel, Inc., and its successors and assigns to cease and desist from violating 14 CFR 257.5 and 49 U.S.C. § 41712 by engaging in the conduct described in paragraphs A and B, *supra*;
- F. Assess civil penalties against Sato, Inc., of \$500,000 for the violations described in paragraphs A, B, C and D above; and \$2,500 for each additional similar violation revealed in the course of this investigation occurring prior to December 12, 2003, and \$25,000 for each violation occurring after that date, pursuant to 42 U.S.C. 46301; and
- G. Grant such other relief as may be appropriate.

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

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Dated: February 17, 2004