



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

Issued by the Department of Transportation
On the 23rd day of April, 2008

Virgin America, Inc.

**Violations of 14 CFR 201.5 and
49 U.S.C. § 41712**

Docket DOT-OST 2008-0031

Served April 23, 2008

CONSENT ORDER

This consent order concerns Virgin America, Inc.'s (Virgin America) advertisement and sale of proposed new air service prior to the carrier obtaining effective economic authority from the U.S. Department of Transportation (Department) in violation of 14 CFR 201.5, which also violated 49 U.S.C. § 41712, the statutory prohibition on unfair and deceptive practices and unfair methods of competition. The order assesses a compromise civil penalty of \$25,000 and directs the carrier to cease and desist from further violations.

Under 14 CFR 201.5, an air carrier may not advertise, accept payment, or issue tickets for air transportation prior to its receipt of appropriate economic authority under 49 U.S.C. § 41101. On May 18, 2007, the Department issued Virgin America a certificate subject to certain conditions, but the carrier did not yet have effective operating authority. In July 2007, Virgin America applied for and by Order 2007-8-17 received a waiver from section 201.5(a)(2) of the Department's regulations permitting the carrier to accept customer payments and issue tickets in advance of the effective date of Virgin America's certification.¹ As a condition of the Department granting the waiver, Virgin America agreed and the Department directed it, among other things, to advise each customer that the carrier did not currently possess effective authority to operate the services for which the ticket was being issued and that its services were subject to receipt of effective government operating authority.

On July 19, 2007, Virgin America ran a number of online and print advertisements that failed to state, as it was directed to do, that the carrier's services were subject to the

¹ This document is available at www.regulations.gov (Docket DOT-OST 2007-26781). Virgin America was orally granted the waiver on July 11, 2007, and Order 2007-8-17 confirming that action was issued on August 17, 2007.

receipt of government operating authority.² Virgin America, by failing to comply with the conditions of the waiver it was granted, violated section 201.5 and, in addition, engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Virgin America states that prior to selling a ticket to any potential customer online or via the phone, each person received a written or oral notification that operation of the flight for which a ticket was being purchased was contingent on Virgin America receiving its government operating authority. Moreover, the carrier maintains that all other conditions of the waiver were observed.

Virgin America further states that in response to the Office of Aviation Enforcement and Proceeding's (Enforcement Office) concerns, the advertisements were immediately suspended and revised, the Enforcement Office was provided with a comprehensive report of the steps taken, and Virgin America expended approximately \$80,000 in remedial efforts to address all concerns raised by the Enforcement Office. Virgin America further states that it has not received any consumer complaints about the advertisements at issue in this case.

We view seriously a carrier's failure to comply with section 201.5, particularly where, as here, a carrier was placed on direct notice of, and agreed to comply with, that provision. We have carefully considered all the facts in this case, including those presented by Virgin America and continue to believe that enforcement action is warranted. In order to avoid litigation, Virgin America has agreed to the issuance of this order to cease and desist from further violations of 14 CFR 201.5 and 49 U.S.C. § 41712 and to the assessment of a civil penalty of \$25,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Virgin America, as well as by other vendors of air transportation.

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 this order as being in the public interest;
2. We find that Virgin America, Inc., violated 14 CFR 201.5 by advertising and accepting reservations for service for which it lacked effective economic authority

² Specifically, the carrier ran print advertisements in a number of large markets, including Los Angeles, San Francisco, Las Vegas, Washington DC, and New York, and also ran banner advertisements on the home page of four of these newspapers' websites. In addition, online advertisements ran on six travel websites and on two online booking sites, which included www.virginamerica.com and www.orbitz.com, without the required disclosure.

without proper notice that the sales were subject to receipt of government authority as required under Order 2007-8-17;

3. We find that by engaging in the conduct described in paragraph 2 above, Virgin America, Inc., violated 49 U.S.C. § 41712;

4. Virgin America, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 201.5 and 49 U.S.C. § 41712;

5. Virgin America, Inc., is assessed \$25,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, which amount shall be due and payable within 15 days of the date of issuance of this order; and

6. 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 in accordance with the attached instructions. Failure to pay the penalty as ordered shall also subject Virgin America, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure 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:

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Deputy General Counsel

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