



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

Issued by the Department of Transportation
on the 14st day of April, 2016

Lufthansa German Airlines

**Violations of 14 CFR Part 382 and
49 U.S.C. §§ 41705 and 41712**

Docket OST-2016-0002

Served: April 14, 2016

CONSENT ORDER

This consent order concerns violations by Lufthansa German Airlines (Lufthansa) of 14 CFR Part 382 (Part 382) with respect to the requirement that carriers provide dispositive written responses to written disability-related air travel complaints. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of Part 382 constitute violations of the ACAA. Violations of 14 CFR Part 382 as well as 49 U.S.C. § 41705 also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

The violations addressed in this order were found during September 2013 on-site regulatory compliance inspections conducted by the staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at Lufthansa's U.S. headquarters in New York. This order directs Lufthansa to cease and desist from future similar violations and assesses a compromise civil penalty of \$200,000.

Applicable Law

Pursuant to 14 CFR 382.155(d), carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. An appropriate dispositive response must discuss the complaint at issue, specifically admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances, summarize the facts and reasons that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, steps the carrier will take if it finds a violation, and advise the complainant of his or her right to pursue DOT enforcement action under Part 382.

Facts and Conclusions

As a foreign air carrier that engages in air transportation to and from the United States, Lufthansa is subject to 14 CFR Part 382 and 49 U.S.C. §§ 41705 and 41712. Therefore, Lufthansa must comply with 14 CFR 382.155(d), discussed above.

As part of the on-site regulatory compliance review conducted by the Enforcement Office, the investigation team reviewed all disability-related complaints received by Lufthansa in the calendar year 2012 and the first half of the calendar year 2013. The Enforcement Office found that in many instances Lufthansa did not inform passengers of their right to pursue enforcement action with the Department as required by 14 CFR 382.155(d). Specifically, in a number of complaint files reviewed, Lufthansa referred the passenger to an attachment to the response, sometimes calling it “Travel Tips.” The Department has found that the attachment does not meet the referral requirement in 382.155(d)(3), as it does not specifically advise the passenger of his or her right to pursue enforcement action with the Department and instead merely lists the Department’s contact information at the very end of a list of offices for a passenger to contact. In other complaint files that the Department reviewed, Lufthansa does not refer to the attachment and does not in any other manner refer the passenger to the Department.

Additionally, in many instances, Lufthansa failed to specifically admit or deny that a violation of the substantive portions of Part 382 that were at issue in the complaints occurred, in violation of 14 CFR 382.155(d).

Mitigation

In mitigation, Lufthansa states that it is fully committed to observing and complying with the Department’s regulations related to disabled passengers and consumer protection requirements. Lufthansa points out that it fully cooperated with the Department during its 2013 audit, 2014 site visit to Frankfurt Airport, as well as the current investigation.

Lufthansa believes that the incidents alleged herein do not constitute violations of 49 U.S.C. §§ 41705 and 41712 and that enforcement action is unwarranted. Lufthansa asserts that the alleged violations do not relate to how Lufthansa cares for or treats its passengers with respect to the service-related requirements of Part 382 but relate only to its written responses to passengers with disabilities by the Company’s customer relations representatives and the language of the responses. Lufthansa states that it provides world-class service to all of its passengers, including those traveling with disabilities. Lufthansa also states that during 2012 and 2013 it handled over one million passengers with various disabilities at its Frankfurt Airport hub. In addition, Lufthansa states that it firmly believes that all of the responses to complaints comply with either the letter or spirit of DOT regulations. Lufthansa further explains that in its “Travel Tips” document, Lufthansa informs passengers to contact a CRO or the Department if they have any questions or concerns.

Lufthansa states that it agreed to settle this matter to avoid the cost and impact of protracted litigation and believes that its resources are better focused on furthering its ongoing efforts to

enhance and improve the customer experience for all of its passengers, including those with disabilities. Lufthansa states that it does not admit to any violations of any Department rules or regulations.

Lufthansa states that it has spent millions of euros in improving accessibility and service to individuals with disabilities. Lufthansa explains that it has a dedicated team of representatives in its customer relations department to research and respond to disability-related complaints. Lufthansa states that while it continues to believe its written responses were and are compliant with the Department's requirements, it has revised the language in its responses to avoid future disputes with the Department over the language of its responses.

Decision

The Enforcement Office has carefully considered the information provided by Lufthansa, but continues to believe that enforcement action is warranted. The Enforcement Office and Lufthansa have reached a settlement of this matter in order to avoid litigation. Without admitting the violations described above, Lufthansa consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Part 382 and 49 U.S.C. §§ 41705 and 41712, and to the assessment of \$200,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and the size and sophistication of the carrier, and serves the public interest. It represents a strong deterrent to future similar practices by Lufthansa and other 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 Lufthansa German Airlines violated 14 CFR 382.155(d) by failing to provide dispositive written responses to written complaints involving passengers with disabilities;
3. We find that Lufthansa German Airlines violated 49 U.S.C. § 41705 by engaging in the conduct described in paragraph 2;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Lufthansa German Airlines engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Lufthansa German Airlines and its successors and assigns to cease and desist from violations of 14 CFR 382.155 and 49 U.S.C. §§ 41705 and 41712;

6. We assess Lufthansa German Airlines a compromise civil penalty of \$200,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4, above. Of that amount, \$100,000 shall be due and payable within 30 days after the service date of this order. The remaining amount, \$100,000, shall become due and payable if, within one year of the date of issuance of this order, Lufthansa German Airlines violates the order's cease and desist provisions or fails to comply with the order's payment provision, in which case Lufthansa German Airlines may be subject to additional enforcement action for violation of this order;
7. We order Lufthansa German Airlines to pay the penalty as ordered in paragraph 6 through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Lufthansa 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 ten (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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