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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

US Airways, Inc.,

Respondent.

AWA No. 08- 0049

COMPLAINT

There is reason to believe that the respondent named herein has violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the “Act”), and the regulations and standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142) (the “Regulations”). Therefore, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”) issues this complaint alleging as follows:

JURISDICTIONAL ALLEGATIONS

1. Respondent US Airways, Incorporated (“Respondent”), is a Delaware corporation whose principal place of business is: US Airways, Inc., 111 West Rio Salado Parkway, Tempe, Arizona 85281.
2. Respondent’s agent for service of process is: US Airways, Inc., c/o CT Corporation System, 2394 E Camelback Road, Phoenix, Arizona 85016.
3. Respondent, at all material times mentioned herein, was operating as a carrier, as defined in the Act and Regulations.

4. At all material times mentioned herein, Respondent has held Animal Welfare Act registration number 52-T-0101, issued to "U S AIRWAYS INC."

ALLEGATIONS REGARDING THE SIZE OF RESPONDENT'S BUSINESS,
THE GRAVITY OF THE ALLEGED VIOLATIONS AND
RESPONDENT'S COMPLIANCE HISTORY AND GOOD FAITH

5. The size of Respondent's business is large.

6. For instance, according to Respondent's Form 10-K for fiscal year ended December 31, 2006, filed with the Securities and Exchange Commission, Respondent "is a certificated air carrier engaged primarily in the business of transporting passengers, property and mail. [Respondent] enplaned approximately 36 million passengers in 2006. As of December 31, 2006, [Respondent] operated 226 jet aircraft. During 2006, [Respondent], along with US Airways Express, provided regularly scheduled service or seasonal service at 178 airports in the continental United States, Canada, Latin America, the Caribbean and Europe."

7. The gravity of the violations alleged herein is significant.

8. The allegations below refer to violations of several regulatory provisions, some of which lasted weeks and one of which potentially continues to this day.

9. For instance, Respondent, through correspondence, acknowledges that it regularly engages in the activity upon which one of the allegations below (¶45) is based.

10. Although Respondent does not have a history of litigated violations, Complainant, pursuant to the Act, has previously initiated no fewer than two civil enforcement actions based on Respondent's failure to comply with the Act and Regulations.

11. For instance, Complainant initiated a proceeding against Respondent, In re US Airways, Inc., a Delaware Corporation (AWA 01-0038), that, on or about June 21, 2002, resulted in Respondent entering into a consent agreement with APHIS in which Respondent agreed to pay a civil penalty of \$50,000.00.

12. Additionally, Complainant initiated an earlier proceeding against Respondent, In re: US Airways, Inc. (AWA 97-0032), that, on or about September 22, 1998, also resulted in Respondent entering into a consent agreement with APHIS.

13. Also, on or about July 24, 2000, APHIS made available to Respondent a Settlement Agreement that resulted in Respondent submitting to APHIS a stipulated payment of \$1,250.00, in connection with Respondent's non-compliance with the Regulations on or about March 26, 2000.

14. Finally, on or about March 2, 2000, APHIS issued an Official Warning (APHIS Form 7060) to Respondent regarding Respondent's non-compliance with the Regulations on or about January 8, 2000.

15. Respondent's conduct described herein reveals a disregard for, or unwillingness to abide by, the requirements of the Act and the Regulations. Such an ongoing pattern of violations demonstrates a lack of good faith and a "history of violations."

SUMMARY OF ALLEGATIONS

16. Part one (¶¶ 18-41): Between on or about March 29, 2004 and on or about April 16, 2004, Respondent transported a cat while failing to ensure that it was at all times securely contained within its enclosure and failing to observe said cat at least once every four hours during flight or at least whenever the cargo space was otherwise accessible; and, on or about March 29, 2004, Respondent transported a cat in a primary enclosure that was insufficient to contain the cat securely and failed to observe said cat when its kennel was transferred, empty, in Philadelphia from U.S. Airways flight 826 to U.S. Airways Flight 14, in violation of sections 3.14(a)(1), 3.14(a)(3) and 3.17(b) of the Regulations. 9 C.F.R. §§ 3.14(a)(1), 3.14(a)(3), 3.17(b).

17. Part two (¶¶ 42-44): On or about March 13, 2005, Respondent placed a primary enclosure containing a live dog on an elevated baggage claim conveyor belt that led to

the baggage claim area at Philadelphia International Airport, in violation of section 3.19(b)(1) of the Regulations. 9 C.F.R. § 3.19(b)(1).

ALLEGATIONS

Part one

18. On or about March 29, 2004, Respondent accepted for transport, in commerce, no fewer than three cats and one dog from Phoenix, Arizona to Munich, Germany, via Philadelphia, Pennsylvania.

19. Specifically, on or about March 29, 2004, Respondent accepted for transport, in commerce, no fewer than three cats and one dog on U.S. Airways Flight 826 from Phoenix to Philadelphia and U.S. Airways Flight 14 from Philadelphia to Munich.

20. On or about March 29, 2004, U.S. Airways Flight 826 from Phoenix to Philadelphia utilized an A320-type aircraft, Federal Aviation Administration ("FAA") Registry Number N178US (hereinafter "N178US").

21. Each of the three cats and dog that Respondent accepted for transport from Phoenix to Munich were housed in separate kennels.

22. On or about March 29, 2004, Respondent unloaded these four kennels in Philadelphia from U.S. Airways Flight 826 (N178US) and loaded said kennels to U.S. Airways Flight 14 bound for Munich.

23. On or about March 30, 2004, and upon arrival of U.S. Airways Flight 14 in Munich, one of the kennels Respondent had accepted for transport was discovered to be empty.

24. This kennel, at the time Respondent accepted it in Phoenix for transport to Munich, contained a cat.

25. Soon thereafter, on or about March 30, 2004, one of Respondent's employees sent an electronic mail message to several of Respondent's employees in which the following was written:

"Subject: Missing Cat – MUCUS11623 DRP

I have been informed by MUC that Flt 826 arrived this morning with a missing cat. Passenger [] traveled PHX – PHL – MUC and checked 3 cats and one dog each in separate kennels. Upon arrival, one of the cats was missing. All kennels, including the empty kennel, were securely locked and closed. There was no indication that the missing cat escaped (and re-locked) it's [sic] kennel enroute. Cat description is as follows . . . The most likely place to begin looking is PHL. I need someone to check with the Supervisor and Agents who handled transfer baggage from US 826 and who loaded US 14."

26. On or about April 16, 2004, the missing cat was located in the cargo bin of Respondent's aircraft N178US.

27. On or about April 16, 2004, Respondent's aircraft N178US was located in Manchester, New Hampshire.

28. On or about April 16, 2004, an overnight cleaning crew hired by Respondent heard meow sounds from the cargo bin of Respondent's aircraft N178US.

29. The overnight cleaning crew was unable to observe the cat and left a note for Respondent's morning employees regarding the cat meows.

30. On or about April 16, 2004, Respondent's employees heard the cat meows and observed cat feces in the cargo bin.

31. Respondent's employees contacted a New Hampshire Animal Control Officer, who, after several attempts, assisted in retrieving the cat.

32. As stated in Respondent's own "Flight and Airline Incident Report," dated April 16, 2004, that morning:

“Capt advised dispatch that a cat had been observed on board the A/C in front of the center fuel tank. MTC was advised and the A/C was grounded until the cat could be removed. Animal control was contacted by station to help in the safe removal of ‘Billy’ the Kit who began his extended journey on March 29 on flight 14 PHL-MUC. Yes that is correct, March 29 through April 16 inside the belly of our aircraft. When Billy was safely retrieved he was cleaned up and provided some cat food, water, and a Chairman’s Gold Frequent Flyer award.”

33. Between on or about March 29, 2004 and on or about April 16, 2004, Respondent’s aircraft N178US made numerous flights throughout the United States.

34. For instance, on or about April 1, 2004, Respondent’s aircraft N178US traveled, with the unobserved cat in its cargo hold, from Pittsburgh (PIT) to Charlotte (CLT), from Charlotte (CLT) to Los Angeles (LAX), from Los Angeles (LAX) to Philadelphia (PHL) and from Philadelphia (PHL) to Hartford (BDL).

35. Respondent’s aircraft N178US traveled, with the unobserved cat in its cargo hold, each day between on or about March 29, 2004 and on or about April 16, 2004, with at least two flight segments each day and as many five flight segments on a single day.

36. On information and belief, before and after each such flight segment Respondent loaded and unloaded the cargo area of N178US.

37. During this time, Respondent failed to observe the cat in cargo hold of its aircraft.

38. Accordingly, on or about March 14, 2004, Respondent transported a cat in a primary enclosure that was insufficient to contain the cat securely.

39. Between on or about March 14, 2004 and on or about April 16, 2004, Respondent transported a cat while failing to ensure that it was at all times securely contained within its enclosure.

40. Between on or about March 14, 2004 and on or about April 16, 2004, Respondent failed to observe a cat at least once every four hours during flight or at least whenever the cargo space was otherwise accessible.

41. In particular, on or about March 14, 2004, Respondent failed to observe a cat when its kennel was transferred, empty, in Philadelphia from U.S. Airways flight 826 to U.S. Airways Flight 14.

Part two

42. On or about March 13, 2005, Respondent placed a primary enclosure containing a live dog on an elevated baggage claim conveyor belt that led to the baggage claim area at Philadelphia International Airport.

43. On or about April 18, 2005, Respondent, in a letter to “Ms. Roberta Moore, Post Office Box 838” signed by “Michele M. Lynch,” stated that “Upon seeing [the] dog [referred to above in paragraph 42] on the baggage belt, the Skycap retrieved the dog off the belt. Kennels are permitted to be on the baggage conveyor belt...”

44. Section 3.19(b)(1) of the Regulations provides that “Any person handling a primary enclosure containing a dog or cat must use care and must avoid causing physical harm or distress to the dog or cat. (1) A primary enclosure containing a live dog or cat must not be placed on unattended conveyor belts, or on elevated conveyor belts, such as baggage claim conveyor belts and inclined conveyor ramps that lead to baggage claim areas, at any time; except that a primary enclosure may be placed on inclined conveyor ramps used to load and unload aircraft if an attendant is present at each end of the conveyor belt.”

ALLEGED VIOLATIONS OF THE ACT AND REGULATIONS

45. On or about March 29, 2004, Respondent transported a cat in a primary enclosure that was insufficient to contain the cat securely, in violation of section 3.14(a)(1) of the Regulations. 9 C.F.R. § 3.14(a)(1).

46. Between on or about March 29, 2004 and on or about April 16, 2004, Respondent transported a cat while failing to ensure that it was at all times securely contained within its enclosure, in violation of section 3.14(a)(3) of the Regulations. 9 C.F.R. § 3.14(a)(3). Each day this violation continued constitutes a separate violation. 7 U.S.C. § 2149(b).

47. Between on or about March 29, 2004 and on or about April 16, 2004, Respondent failed to observe a cat at least once every four hours during flight or at least whenever the cargo space was otherwise accessible, in violation of section 3.17(b) of the Regulations. 9 C.F.R. § 3.17(b). Each violation and each day during which this violation continued constitutes a separate violation. 7 U.S.C. § 2149(b).

48. On or about March 29, 2004, Respondent failed to observe a cat when its kennel was transferred, empty, in Philadelphia from U.S. Airways flight 826 to U.S. Airways Flight 14, in violation of section 3.17(b) of the Regulations. 9 C.F.R. § 3.17(b).

49. On or about March 13, 2005, Respondent placed a primary enclosure containing a live dog on an elevated baggage claim conveyor belt that led to the baggage claim area at Philadelphia International Airport, in violation of section 3.19(b)(1) of the Regulations. 9 C.F.R. § 3.19(b)(1).

WHEREFORE, it is hereby requested that for the purpose of determining whether Respondent has in fact willfully violated the Act and the Regulations issued under the Act, this Complaint shall be served upon Respondent. Respondent shall file an Answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance

with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an Answer shall constitute an admission of all the material allegations of this Complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless Respondent fails to file an Answer within the time allowed therefor, or files an Answer admitting all the material allegations of this Complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:

(a) requiring Respondent to cease and desist from violating the Act and the Regulations and Standards issued thereunder; and

(b) assessing civil penalties against Respondent in accordance with section 2149 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.

this 17th day of January, 2008

Acting Kevin Shea
Administrator
Animal and Plant Health Inspection Service

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