



**U.S. Department  
of Transportation**

Office of the Secretary  
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.  
Washington, D.C. 20590

SEP 22 2005

Mr. Gerald W. Kerr Jr.  
500 Fox Ridge Road  
St. Louis, MO 63131

Dear Mr. Kerr:

This letter is in further reference to your disability complaint, regarding Continental Airlines' policy regarding the Segway Personal Human Transport. We are sorry to hear of the incident and appreciate the opportunity to advise you of the outcome of our investigation. Enclosed you will find an Investigation Summary Sheet that details the results of our investigation, which was based on the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and our implementing rule, 14 CFR Part 382.

In particular, the Investigation Summary Sheet identifies the applicable section of 14 CFR Part 382, provides a brief summary of that section and explains this office's view on whether the carrier has violated the ACAA and 14 CFR Part 382. If your complaint raises more than one disability issue, an additional Investigation Summary Sheet has been attached to address each issue.

If we believe the complained of incident involves a violation, the Investigation Summary Sheet indicates the action that we plan to take. We will either pursue formal enforcement action or by copy of this letter notify the airline specified in your complaint of our determination and warn it that any similar incidents could lead to formal enforcement action. Generally, we will pursue enforcement action on the basis of a number of complaints from which we may infer a pattern or practice of discrimination. However, where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, we will pursue enforcement action as our resources permit. If we decide to seek enforcement action against the airline, your complaint will be among those considered in the context of this action, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. In the event that this enforcement action leads to litigation, it is possible that we may need sworn statements or witnesses for a hearing. We will advise you if, in fact, we need your further help.

For your information, in an enforcement case, the U.S. Department of Transportation is limited to issuing cease and desist orders and assessing civil penalties not to exceed \$25,000 per violation. Such action can only be accomplished through settlements or formal hearings before administrative law judges. We cannot order compensation for aggrieved parties. To obtain a personal monetary award of damages, a complainant would have to file a private legal action that may be based on private contract rights or on civil rights statutes that provide for a private right of action.

If we have insufficient evidence or it appears that the airline specified in your complaint has not violated the ACAA, we will not pursue enforcement action. Notwithstanding our decision not to pursue enforcement action, however, private legal action may be pursued in the courts based on private contract rights or on civil rights statutes that provide for a private right of action and, in such a proceeding, monetary damages may be sought.

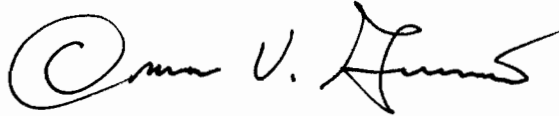
Regardless of whether the airline has been determined to have violated the ACAA, we have entered your complaint in our computerized industry monitoring system, and the carrier's ACAA complaint totals in our monthly *Air Travel Consumer Report* reflect your complaint. Our monthly report is made available to the aviation industry, the news media and the general public so that both consumers and air travel companies can compare the overall complaint records of individual airlines, as well as the number of disability complaints filed against particular carriers. This system also serves as a basis for rulemaking, legislation and research.

Moreover, we also routinely monitor our complaint records to determine the extent to which carriers are in compliance with the ACAA and to track trends or spot areas of concern which we feel may warrant further action. This ongoing process also enables us to ensure prompt corrective action whenever we determine that an airline's policies or procedures are not in compliance with our ACAA regulations. Your complaint will be among those considered in the context of this overall process.

I hope this further information is useful. Thank you again for taking the time to contact us.

Sincerely,

Blane A. Workie  
Chief, Aviation Civil Rights Compliance Branch  
Office of the Assistant General Counsel for  
Aviation Enforcement and Proceeding



By: Omar V. Guerrero  
Trial Attorney

Enclosures

cc: Continental Airlines

## INVESTIGATION SUMMARY SHEET

Case Number HU2003090013

Complainant Title Mr. Last Name Kerr First Gerald MI

Address 1 500 Fox Ridge Road City St. Louis

Address 2  State MO Zip Code 63131

Passenger(s) Mr. Gerald Kerr

Airline Continental Airlines Travel Date(s) none

Flight Number(s) none City Pair none

Location of Incident Call to Continental Reservations

Complaint/Issue Mr. Kerr, an individual with a disability who uses a Segway as a mobility device, stated in his complaint that he called Continental Airlines and was informed that the carrier does not recognize the Segway as an assistive device for individuals with a disability and, as such, will charge any passenger wishing to transport a Segway \$130.

Applicable Section of 14 CFR Part 382 382.57

Section Summary Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability.

Rule Violated? Yes

Remarks Mr. Kerr informed DOT that he was going to go on a trip and called Continental Airlines to determine if there was going to be a problem with the Segway PHT and he was told that the carrier will charge \$130 to transport the Segway PHT.

Continental Airlines' August 29, 2003, response letter to Mr. Kerr's telephone call to the carrier reiterated that the carrier does not view the Segway PHT as an assistive device and, as such, the PHT will be subject to a \$130 service charge for travel between the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. All other destinations will be subject to a \$150. service charge.

DOT's position on the Segway PHT is that although the device does not fit the definition of a wheelchair, when it is used by a person with a disability as a mobility device, it qualifies as a part of the broad class of mobility aids and occupies a legal position analogous to canes, walkers, etc. As such, DOT finds Continental's policy and practice to not consider the Segway PHT as an assistive device and subjecting a qualified person with a disability to a service charge for the transport of the Segway PHT, constitutes a violation of the ACAA.

On September 5, 2003, Continental Airlines informed DOT, per the DOT's request, that the carrier rescinded its policy of charging a service fee to transport the Segway when it is transported by individuals with a disability who use the Segway PHT as their mobility assistive device. As such, DOT will not pursue enforcement action against Continental Airlines, at this time, for the carrier's violation of 14 CFR 382.57.



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Case Number

Complainant Title  Last Name  First  MI

Address 1  City

Address 2  State  Zip Code

Passenger(s)

Airline  Travel Date(s)

Flight Number(s)  City Pair

Location of Incident

Complaint/Issue

Applicable Section of 14 CFR Part 382

Section Summary

Rule Violated?

Remarks