

## How Santa Claus Jnr commenced air operations in NZ

In this edition of *The Legal Lounge* I expose publicly for the first time, the process endured by Santa Claus Junior in 2007 when he sought permission to commence air operations in New Zealand, so as to ensure the continued delivery of Christmas presents to children all over New Zealand. This is a true and accurate account of events and the identities are all real...

**From:** Angela Beazer

**Sent:** Thursday, 20 December 2007 4:00 p.m.

**To:** Ken Wells

**Cc:** #ALL USERS (CAA)

**Subject: Urgent advice regarding Santa Claus (NZ) Ltd's intended NZ Air Operations**

Dear Mr Wells

You have forwarded to me an urgent application for registration of an aircraft and application for an Air Operator Certificate by Mr Nicholas Claus, great grandson of Santa Claus, who advises that he holds the license from Santa Claus Corporation International to deliver presents to New Zealand households on Christmas Eve. This application has been submitted without prejudice, on the basis that Mr Claus believes that his mode of transport is not an "aircraft" for the purposes of the New Zealand Civil Aviation Act and Rules, and that he is not carrying out a "Commercial Transport Operation" as that is defined in the Rules.

You have submitted your preliminary view in which you consider that Mr Claus is operating an aircraft and providing a commercial transport operation, thus requiring a part 119 certificate. You consider however that New Zealand should recognise and accept his foreign aircraft certification from the North Pole. You now seek legal advice on those aspects, before determining how to proceed.

### Is Mr Claus operating an "aircraft"



Your preliminary view is that Mr Claus' transportation, pictured above, is an aircraft. You describe it as a cross between a helicopter and a modified sleigh. The sleigh is expandable and has built in compartments to enable a considerable amount of presents to be carried at any one time. Mr Claus advises that it is also amphibious, that is, capable of operating on water or land and, of course, on snow. It has been imported from the North Pole especially to carry out his New Zealand Christmas air operations. I understand that it is considered an aircraft in the North Pole, however that is by direct statutory incorporation. Mr Claus challenges whether it fits within the New Zealand definition.

An aircraft is defined for our purposes as *“any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth”*.

Clearly, this looks for all appearances to be a helicopter, albeit somewhat unique. However, Mr Claus’ argument centres on the fact that there is no engine and no requirement for fuel. He states that it gains lift and flight purely by “magic”. With the greatest of respect to Mr Claus, I agree with your assessment that this cannot be correct. A machine is defined as *“an apparatus using or applying mechanical power and having several parts, each with definite functions and together forming a particular task”*. The absence of an engine does not exclude it from being an aircraft. This places it in the same category as a parachute or hang glider, both of which fall within the definition of an aircraft. It has rotor blades and these operate against the reactions of the forces of the air to provide lift and flight. It is therefore an “aircraft”. You recommend that he retains his North Pole registration marks (NP-XMAS) as that overcomes any First of Type, Licensing and Maintenance issues. We would however need an inter-government agreement covering continuing airworthiness and operational oversight. I have noted your view that if we move quickly that should be arranged in time. I agree that this is an acceptable way forward.

#### **Requirement for Air Operator Certificate**

An Air Operator Certificate is required if Mr Claus is intending to conduct Commercial Air Operations. Those are defined as *“carriage of passengers or goods by air for hire or reward ... where each passenger is performing a task or duty on the operation”*. Mr Claus opposes the need to obtain an Air Operator Certificate. However, clearly he will be carrying goods on Christmas Eve. Further, Mr Claus has helpers who assist throughout the evening in delivering the goods. They are *“passengers performing a task or duty on the operation”*. This operation will clearly fall within the definition of a commercial transport operation.

The only issue of any possible contention is whether it is *“for hire or reward”*. Mr Claus says that he receives no personal payment for his services on Christmas eve. However, there is clearly enormous non-financial, intangible reward in the work Mr Claus carries out through the joy and excitement he brings to children all over the country on Christmas morning. This in itself arguably constitutes “reward” for his air operations. Further, Mr Claus can expect to be very well fed for his services throughout the evening, with cake, cookies, milk and beer and other such delights. I am satisfied that there is sufficient “reward” for his air activities to bring it within the commercial transport operation definition. In addition, his company, Santa Claus Corporation (NZ) Ltd receives payment in order to train his helpers to fly on this special aircraft and deliver the goods. I agree with your assessment therefore, that Santa Claus Corporation (NZ) Ltd is carrying out a commercial transport operation for hire or reward, and requires a Part 119/135 Air Operator Certificate.

I have considered briefly whether an exemption could be granted to Mr Claus to allow him to carry out this activity without an AOC. While not impossible, that would be a serious departure from policy and would probably be an improper use of the Director’s exemption powers. There are also the same safety considerations for Mr Claus’ air operation as for any other commercial operation. Further, we do not have sufficient information to ascertain whether his great grandfather’s foreign AOC would be considered an acceptable equivalent to New Zealand air operating standards, to be recognised in New Zealand.

It is important in any event to ensure that his helpers are properly trained passengers in accordance with Part 135 and that his Operations are conducted in accordance with the applicable Part 135 minimum safety requirements. I therefore recommend that his company be required to complete the New Zealand AOC certification process. I agree that Mr Claus appears, on the information you have provided, to be a fit and proper person to hold an AOC. There are no other known matters which you are aware of that would make the issue of such a certificate to this organisation contrary to the interests of aviation safety. I agree therefore that you can expedite the certification process in time for Christmas.

#### **Other matters**

Mr Claus is, I understand, an experienced pilot with over 20,000 flying hours, including considerable night VFR flight experience. That is good to hear. However, consideration should be given to training Mr Claus and his staff to use night vision goggles, given that this is a relatively high risk night VFR operation. I suggest you send him the AC on night vision goggles and offer to assist him to arrange the necessary training.

Mr Claus will also of course need to operate below minimum VFR height restrictions. Given his skill and the clear need for his services on Christmas Eve, the Director is prepared to issue an exemption from those requirements.

Those matters now having been dealt with, it remains only to wish Mr Claus a safe operation so that we may all have a Merry Christmas.

Sincerely  
CAA Legal Unit

#### **Reaction of Senior Management...**

**From:** John Lanham  
**To:** Angela Beazer; Ken Wells; #ALL USERS (CAA)  
**Sent:** Thursday, 20 December 2007 4:48 p.m.

I'm not sure why this is directed to us AB. It may be night VFR but NVIS will not be involved as the aircraft is operating under internal illumination. Exemptions should not be necessary for LL VFR as the aircraft is carrying out take offs and landings. In any event, as an international flight for hire or reward under Part 129 it is clearly an Airline Group issue. JL

**From:** Tim Allen  
**To:** John Lanham; #ALL USERS (CAA)  
**Sent:** Thursday, 20 December 2007 5:11 p.m.

JL. Part 129 certificates are based on an ICAO member states certification – unable to see any such membership for a “North Pole” Authority.

I believe that this operation more properly falls into the context of “Adventure Operation” and that the emergency rule making powers of DCA may offer you some assistance with this! TA

**From:** John Lanham  
**Sent:** Thursday, 20 December 2007 5:35 p.m.  
**To:** Tim Allen; #ALL USERS (CAA)

Sorry GMA but I can't accept that hospital pass. Adventure Aviation, by definition, involves the carriage of passengers for hire or reward where experience of the flight itself is the purpose of the flight. There are no passengers involved in this operation. Any elves carried would fall under the definition of crew member or flight attendant in Part1 as the duties involve the monitoring and care of the traditional power units. JL

**From:** Murray Fowler  
**Sent:** Friday, 21 December 2007 7:54 a.m.  
**To:** John Lanham; Tim Allen; #ALL USERS (CAA)

This is typical CAA bungling. Do you realise how many kids are going to be %&^# off if Santa can't come and all because none of you has got the balls to issue him a certificate.

I think it's a pretty poor show men. Surely this is a special case. Forget the entry audits, the expositions, the pedantic exit stickers etc. etc. Just give him a certificate. I'm expecting him to drop in here too and if he doesn't come because of this you guys are gonna get it.

Muzz

### **Meanwhile, down in PLAS...**

Debate ensued over how to best establish the truth of the identity of the said Mr Claus, but eventually it was resolved to issue a licence.

This left only the issue of a medical certificate:

**From:** Claude Preitner  
**Sent:** Friday, 21 December 2007 8:50 a.m.  
**Cc:** #ALL USERS (CAA)

Given the age and body built of Mr Claus, I have concerns regarding his cardiovascular fitness and risk of incapacitation, particularly since he is going to climb up and down chimneys, get puffed and then immediately fly again, perhaps with symptomatic cardiac ischaemia at the time.

If he is required to obtain a NZ medical certificate, he is likely to have to be handled under the flexibility provision of the Act... - section 27B(2). CP

**From:** Ross St George  
**Sent:** Friday, 21 December 2007 8:50 a.m.  
**To:** Claude Preitner; #ALL USERS (CAA)

Muzz got it right.....

It's simple : Special Permit to fly and Director's approval for everything else. End of story (in other words – back to work at Petone...NOW!) R.

### **The happy ending**

Despite all the bureaucratic wrangling and hand wringing throughout the organisation, I am pleased to report that all issues were satisfactorily resolved, with a pilot licence, medical and AOC all issued in lightning speed - never before or since experienced by any other applicant! Muzz also got very special presents for his family that year.

I am informed by reliable sources that Mr Claus continues to operate to the satisfaction of the new Director and his HSE standards are considered second to none. So it looks like we are all in for a good Christmas again this year!

The Legal Lounge will return again on a slightly more serious note next year. Until then have a good break and get in touch if you have ideas or suggestions for future articles.

**Angela Beazer is a lawyer and Director of AMC Legal Services Ltd, a law firm specialising in aviation and public law matters. Previous articles from *The Legal Lounge* series may be viewed at [www.amclegal.co.nz](http://www.amclegal.co.nz)**

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