



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

Issued by the Department of Transportation
On the 4th day of January, 2011

Aerovías de México, S.A. de C.V.

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.84**

Docket OST 2011-0003

Served January 4, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Aerovías de México, S.A. de C.V. (Aeromexico) that violated the full fare advertisement requirements specified in 14 CFR Part 399 as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Aeromexico to cease and desist from future violations of Part 399 and Section 41712, and assesses the carrier a compromise civil penalty of \$60,000.

Applicable Law

As an air carrier, Aeromexico is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84 of those rules, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. Under long-standing enforcement case precedent, the Department permits taxes and fees, such as passenger facility charges and departure taxes, that are collected by carriers and other sellers of air transportation to be stated separately in advertisements, so long as the charges are levied by a government entity and are collected on a per passenger basis. Thus, for example, passenger facility charges (PFC) and international departure taxes, with proper disclosure, may be stated separately from the advertised base fare, but the

federal transportation excise tax, which is assessed as a percentage of the ticket price, i.e., on an *ad valorem* basis, and carrier or agent-imposed fees and charges, such as fuel surcharges or insurance surcharges, may not be stated separately from the advertised base fare.¹

Further, in Internet advertising displays, the full fare may be stated on the first screen that displays fares or a base fare may be displayed so long as the existence and amount of permissible separately-stated additional charges are prominently disclosed on that page or through a clearly presented hyperlink that takes the consumer directly to a place on another page showing the nature and amounts of those charges. Failure to comply with these requirements violates section 399.84 and Department case precedent and constitutes an unfair and deceptive trade practice.²

In addition, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify and ensure that their agents identify this fee as the “September 11th Security Fee” in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. This office considers the failure of a carrier or ticket agent to identify the September 11th Security Fee as required by section 1510.7 to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.³

Facts and Conclusions

Recently Aeromexico posted Internet fare advertisements on its website that quoted prices for numerous airfares that did not include applicable fuel surcharges. By failing to include fuel surcharges in its base fares, Aeromexico violated 14 CFR 399.84 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Further, on Aeromexico’s Internet website, when consumers initiated a search for round-trip airfares, the search process began after clicking on the “Book Now” button. The consumer would then be taken to a page showing a range of days with their preferred

¹ See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc.*, OST Docket 2009-0002, Order 2009-11-8 (Nov. 9, 2009). See also Department notices entitled *Disclosure of Airfare Variations: Web vs. Other Sources; Surcharges that may be Listed Separately in Advertisements* (Nov. 4, 2004); *Disclosure of Additional Fees, Charges, and Restrictions on Airfare Advertisements, Including ‘Free’ Airfares* (Sept. 4, 2003); and *Prohibition on Deceptive Practices in Marketing of Airfares to the Public Using the Internet* (Jan. 18, 2001). All notices are available at <http://airconsumer.ost.dot.gov/rules/guidance.html>.

² See, e.g., *Air Jamaica, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-12-25 (December 30, 2008).

³ See, e.g., *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12 (Jan. 16, 2003).

travel date (hereinafter “Dates Page”). For each date, Aeromexico listed the lowest available fare on the route. However, the Dates Page contained only a general statement that “[t]axes or additional fees are not included.” Thus consumers were unable to determine the full fare to be paid at the first point at which Aeromexico displayed a fare. Further, the September 11th Security Fee is among the taxes and fees that were not in the fares on the Dates Page.

Additionally, Aeromexico’s website displayed certain highlighted specials with air fares, e.g., Los Angeles to San Jose del Cabo starting from \$118 US “Each Way Based on Round-Trip Purchase,” but did not include notice of any additional taxes and fees except for a general disclosure at the bottom of the page that appeared to pertain to the special fare as well as to a series of other special fare listings. Aeromexico also excluded carrier-imposed charges from the fares on its flight Dates Page, such as fuel surcharges.

By failing to provide any notice of the existence, nature and amount of the above taxes and fees applicable to these fares at the first point the fares were disclosed to consumers, Aeromexico violated 14 CFR 399.84 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Moreover, the September 11th Security Fee was one of the additional taxes and fees that was not included in the advertised price and was not disclosed as required, which constituted a separate and distinct violation of section 41712.

Mitigation

In mitigation, Aeromexico states that the failure of its website and Internet booking engine to display all fare components in accordance with Department policy was unintentional. According to Aeromexico, when the Enforcement Office advised Aeromexico of its concerns, the carrier revised its website and immediately contacted the third-party vendor on which it had relied to develop the relevant booking engine displays. Aeromexico states that it directed that vendor to modify the displays promptly and introduced internal controls to better oversee Aeromexico fare advertising. Finally, Aeromexico points out that it cooperated fully with the Department in resolving this matter and reaffirms its goal of providing potential customers with full and transparent fare information that meets the Department’s requirements.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Aeromexico, but continues to believe that enforcement action is warranted. The Enforcement Office and Aeromexico have reached a settlement of this matter in order to avoid litigation. Aeromexico, without admitting or denying any violation, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and Part 399 of the Department’s regulations, and to the assessment of \$60,000 in compromise of potential civil penalties otherwise assessable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Aeromexico, as well as by other air carriers and foreign air carriers.

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 Aerovías de México, S.A. de C.V. violated 14 CFR 399.84 by causing to be published air fare advertisements that failed to state the entire price to be paid by the consumer at the first point at which the fare was displayed;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, and by not identifying in its Internet advertisements the September 11th Security Fee, as required by 49 CFR 1510.7, Aerovías de México, S.A. de C.V. also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Aerovías de México, S.A. de C.V. and all other entities owned or controlled by or under common ownership with Aerovías de México, S.A. de C.V. and their successors and assignees, to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. We assess Aerovías de México, S.A. de C.V. a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$30,000 shall be due and payable within thirty (30) days of the date of the issuance of this order. Any unpaid portion of the assessed civil penalty shall be due and payable immediately if Aerovías de México, S.A. de C.V. violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and

6. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as “Fed Wire,” to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered shall subject Aerovías de México, S.A. de C.V. to an assessment of interest, penalty, and collection charges under the Dept Collection Act, and to 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

An electronic version of this document is available at
www.regulations.gov