



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

Issued by the Department of Transportation
On the Twenty-Third day of January, 2012

Asiana Airlines

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

Docket OST 2012-0002

Served January 23, 2012

CONSENT ORDER

This consent order concerns an Internet advertisement by Asiana Airlines (Asiana) that violates the full-fare advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Asiana to cease and desist from future violations of section 399.84 and section 41712 and assesses the carrier a compromise civil penalty of \$70,000.

Applicable Law

As a foreign air carrier, Asiana is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisements where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, 2) include only

general statements regarding the existence of such taxes and fees, or 3) separately state carrier-imposed fees, such as fuel surcharges, do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.¹

In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Facts and Conclusions

For a period of time in the Fall 2011, Asiana's website, displayed advertisements stating "Los Angeles...Ho Chi Minh City From \$517," "Beijing From \$498," "Manila From \$517," "Shanghai From \$489," and "Phnom Penh From \$556." Below these fares was a link stating "Additional taxes, fees, and other restrictions may apply," which took the consumer to a landing page that stated, "Special Fares," with a description of applicable taxes and fees in the fine print at the bottom of the page, which was on a different screen. Thus, consumers were not notified of the additional taxes and fees applicable to the advertised "Los Angeles" sale fares, including a carrier-imposed fuel-surcharge, until after they arrived at the landing page and only if they scrolled down to the bottom of the next screen. Asiana's failure to provide proper notice of taxes and fees that may legally be stated separately from the base fare and its failure to include all carrier-imposed charges in the advertised base fares violate 14 CFR 399.84 and 49 U.S.C. § 41712.³

Mitigation

¹ On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier-or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

² For example, under current policies, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

³ See, e.g., *US Airways, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2011-6-2 (June 2, 2011)*; *Delta Air Lines, Inc. Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2010-5-30 (May 28, 2010)*.

In mitigation, Asiana takes seriously its responsibility to comply with DOT regulations and enforcement case precedent. Moreover, Asiana states that it is strongly committed to promoting its fares and services in a transparent and understandable manner and in no way intended to mislead any would-be passenger. The carrier asserts that it never received any consumer complaint with respect to the special fare advertising in question, which was available only for a relatively short period of time. Asiana believes the promotional fare advertising in question was an isolated incident, the result of a simple misunderstanding by one or two individuals with respect to how to use a hyperlink to provide notice of taxes and charges. Asiana states that it previously had trained its marketing and Internet personnel to ensure compliance with section 399.84 as interpreted by the Department in enforcement cases, but this one advertising offer did not comply with that training. Immediately after being notified by the Department, Asiana terminated its special fare advertising and asserts that it directed its Internet marketing department to conduct a comprehensive review of its website to ensure it meets regulatory requirements and enforcement case precedent. Asiana states that it also conducted a review of other advertising media. In light of this comprehensive review and Asiana's training of its personnel, Asiana is confident that it will comply with Department enforcement case precedent in the future and that it will avoid even inadvertent violations.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Asiana and continues to believe that enforcement action is warranted. The Enforcement Office and Asiana have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Asiana consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and to the assessment of \$70,000 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 serves the public interest. It represents a strong deterrent against future noncompliance with the Department's advertising requirements.

This order is issued under the authority in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Asiana Airlines violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;

3. We find that by engaging in the conduct described in ordering paragraph 2, above, Asiana Airlines engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Asiana Airlines and all other entities owned or controlled by, or under common ownership and control with Asiana Airlines, their successors, affiliates, and assignees, to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Asiana Airlines and its successors and assignees to possible further enforcement action;
5. We assess Asiana Airlines \$70,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$35,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$35,000 shall become due and payable immediately if Asiana Airlines violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order Asiana Airlines to remit the payment assessed in ordering paragraph 5 above by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Asiana Airlines, to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to additional 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