



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

Issued by the Department of Transportation  
On the Second day of March, 2012

**Qantas Airways Limited**

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

**Docket OST 2012-0002**

**Served March 2, 2012**

**CONSENT ORDER**

This consent order concerns an Internet advertisement by Qantas Airways Limited (Qantas) that violates the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Qantas to cease and desist from future violations of section 399.84 and section 41712 and assesses the carrier a compromise civil penalty of \$40,000.

**Applicable Law**

As a foreign air carrier, Qantas 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. Prior to January 26, 2012, the Department 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 were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately

determine the full fare to be paid. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.<sup>1</sup>

Prior to January 26, 2012, in Internet advertising displays, taxes and fees that properly could be stated separately from the advertised fare were allowed to be disclosed through a prominent link placed adjacent to the stated fare that noted that taxes and fees were extra and directly took 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 were prominently and immediately displayed.

### **Facts and Conclusions**

For a period of time in the Fall of 2011, Qantas displayed on numerous websites fare advertisements that omitted taxes and fees but did not, as required for such ads, link to a web page that provided an immediate visible display of those taxes and fees. Rather, after clicking on the advertised fare, the consumer was taken to a landing page where the consumer had to scroll to the bottom of the page to view the nature and amounts of the additional taxes and fees. Qantas' failure to provide proper notice of taxes and fees that could then be legally stated separately from the fare violated 14 CFR 399.84 and 49 U.S.C. § 41712.

### **Mitigation**

In response, Qantas acknowledges the online advertising in question and regards any violation as inconsistent with Qantas' longstanding commitment to compliance with all DOT requirements. Qantas states that it regrets the possibility of any consumer confusion attributable to any aspect of its marketing but believes that any consumer confusion would have been very limited under the specific circumstances of this case. Qantas also points out that it corrected the alleged deficiency immediately upon learning of it and that the company at the same time implemented measures to prevent any reoccurrence.

### **Decision**

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Qantas and continues to believe that enforcement action is warranted. The Enforcement Office and Qantas have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the

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<sup>1</sup> 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); 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 became 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.

violations described above, Qantas 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 \$40,000 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 Qantas Airways Limited 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, Qantas Airways Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Qantas Airways Limited and all other entities owned or controlled by, or under common ownership and control with Qantas Airways Limited, its 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 Qantas Airways Limited and its successors and assignees to additional enforcement action;
5. We assess Qantas Airways Limited \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$20,000 shall become due and payable immediately if Qantas Airways Limited violates this order's cease and desist provision 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 Qantas Airways Limited 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 Qantas Airways Limited, 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)

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