



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

Issued by the Department of Transportation
on the **30th day of December, 2003**

**Spirit Airlines, Inc.
Violations of 49 U.S.C. § 41712
and 14 CFR 399.84**

Docket OST-2003-14194

Served: December 30, 2003

CONSENT ORDER

This consent order concerns airfare advertising by Spirit Airlines, Inc. (“Spirit”), an air carrier, on its website (www.spiritair.com) that failed to comply with advertising requirements specified in Part 399 of the Department’s regulations (14 CFR Part 399) and violated 49 U.S.C. § 41712. The order directs Spirit to cease and desist from further violations and assesses the carrier a compromise civil penalty.

To ensure that consumers are given accurate and complete fare information on which to base their airline travel plans, section 399.84 of the Department’s rules requires that fare advertisements by air carriers or their agents state the full price to be paid by the consumer. As we have specifically advised carriers, and as the Department has indicated in prior consent orders, these requirements apply to advertisements on Internet sites.¹ Spirit, as an air carrier, is subject to the advertising requirements of Part 399 of the Department’s rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to violate 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or agent for such air transportation, tour or tour component. However, under longstanding enforcement case precedent, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by the government on a per-passenger basis, so long as their existence and amounts are clearly indicated in the advertisement. (See, e.g., Order 97-11-14). Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised fare.

Spirit failed to properly disclose the full fare, including taxes and fees, where applicable, for airfares advertised on its website. Spirit maintained a search feature that failed to include all taxes and fees in the airfares displayed to consumers or to clearly indicate the

¹ See, e.g.: *Icelandair, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-4-9; *Travelocity.com, L.P.*, Order 2002-3-28, *US Airways*, Order 2001-5-32; *Northwest Airlines*, Order 99-8-23. In addition, the Department’s industry letters and notices on this subject are available on the Department’s website (<http://www.dot.gov/airconsumer/>).

existence and amount of the taxes and fees that may properly be separately stated (such as segment fees, Passenger Facility Charges, the September 11th Security Fee and, for international destinations, additional government-imposed taxes and fees). There was no asterisk or other distinguishing symbol next to the fares directing the consumer's attention to the terms and conditions section or highlighting the existence of additional fees. Consumers were not adequately informed of the existence of additional fees and therefore could not calculate the full price of the advertised airfares unless, after progressing through two steps of the booking process, the consumer clicked on the hyperlinked statement entitled "I agree to the terms."

Under Department precedent referred to above, advertisements may exclude from a fare certain kinds of charges, generally government-imposed, per passenger fees that are not *ad valorem* in nature, so long as the excluded charges are presented in close proximity to the advertised fare. Internet fare advertisements that quote a fare that is not a full fare or that has significant restrictions should have an explicit statement that additional charges or conditions apply immediately adjacent to the fare with a hyperlink to a full explanation. Alternatively, specific fare advertisements should highlight the fact that additional fees, restrictions, or conditions apply, with an asterisk or other symbol immediately next to the fare or list of fares, together with a concise explanation for the asterisk or symbol (e.g., "taxes, fees, and restrictions apply") in reasonably close placement to the relevant fare or fares. A full explanation of the nature and amount of all additional fees and significant restrictions should appear on the same page as the quoted fare or may be linked to the fare by a single hyperlink. As published on the Internet, Spirit advertisements violated section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In addition to the above violation, Spirit caused a print advertisement promoting each-way fares to be published in certain newspapers. The advertisement listed fares from Washington D.C. to Cancun, Ft. Lauderdale, and San Juan. However, the body of the advertisement did not state prominently and in close proximity to the advertised fares that the advertised fares were each-way fares and required a roundtrip purchase. That information was only provided in the detailed information at the bottom of the advertisement.

The Enforcement Office has as a matter of enforcement policy permitted the listing in price advertisements of each-way fares, provided that the roundtrip purchase requirement is prominently and proximately displayed. Prominently means in very close proximity if not adjacent to the advertised fare and of a type size sufficient to alert the reader to the provision. (i.e., larger than the fine print usually found at the bottom of ads). See, e.g., Order 2003-7-39. Spirit's advertisement failed to disclose the significant requirement of a roundtrip purchase and therefore was in violation of section 399.84 of the Department's regulations and 49 U.S.C. §41712.

In mitigation, Spirit states that it had no intention of providing misleading information in its Internet advertising. Spirit points out that if a consumer clicked on the link entitled "I accept the terms," a page was displayed that contained detailed information regarding taxes and fees. Spirit also indicates that while it agrees that usage of the phrase "I accept the terms" was inartful, the intent was to comply with the Department's rules. Moreover,

according to the carrier, the customer could not have completed the final purchase step of the transaction without first seeing a clear and accurate display of the total purchase price. Furthermore, the company states that within two days of being contacted by the Office of Aviation Enforcement and Proceedings, Spirit implemented changes to its website such that the existence of additional taxes and fees was clearly indicated to consumers. In regards to the print advertisement, Spirit indicates that the violation was inadvertent, and that the ads in question escaped review because of a recent change in its advertising agencies. Moreover, Spirit notes that the roundtrip purchase requirement was disclosed in the rules and restrictions set forth just below the advertised fares.

The Aviation Enforcement Office has carefully considered all of the facts of the case, including the information provided by Spirit and the corrective measures it quickly adopted, but continues to believe that enforcement action is warranted. Spirit, in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$20,000 in compromise of potential civil penalties, of which one-half will be paid according to the payment provisions described below. The remaining \$10,000 shall be suspended for one year following the service date of this order, and shall then be forgiven unless Spirit fails to comply with the provisions of this order, including its cease and desist and payment provisions, during the suspension period, in which case the entire unpaid portion of the \$20,000 assessed penalty shall be due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Spirit, as well as by other airlines, travel agents, and other sellers of air transportation.

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 Spirit Airlines, Inc., has violated 14 CFR 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Spirit Airlines, Inc., also violated 49 U.S.C. § 41712;
4. Spirit Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with, Spirit Airlines, Inc. and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Spirit Airlines, Inc., is assessed \$20,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in

ordering paragraphs 2 and 3 of this order. Of that penalty amount, \$10,000 shall be due and payable within 30 days of the service date of this order. The remaining \$10,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Spirit Airlines, Inc., violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Spirit Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications 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.

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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