



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

Issued by the Department of Transportation
on the 10th day of April, 2003

Icelandair, Inc.

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

Docket OST 2003-14194

Served April 10, 2003

CONSENT ORDER

This consent order concerns advertisements on Icelandair's web site and e-mail advertisements disseminated by the carrier that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. In a number of advertisements appearing on the Icelandair site (www.Icelandair.com) in late 2002, the carrier stated prices for tours that did not include certain taxes and fees and failed to list such additional taxes and fees or to provide a direct link to a page that would indicate the amounts of those charges. Comparable omissions occurred in advertisements which the carrier distributed by e-mail. Moreover, certain advertisements and e-mail messages improperly stated insurance surcharges separately from the base fares. These displays and e-mail solicitations were, as a result, in violation of 14 CFR 399.84 and enforcement case precedent, and constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged 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 Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are approved or levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. However,

¹ See, e.g.: *US Airways, Violations of 49 U.S.C. 41712 and 14 CFR 399.84, Order 2001-5-32*; *Northwest Airlines Order 99-8-23*; *Delta Air Lines Order 97-7-24*; *American Express Travel Related Services Company, Inc., Order 96-11-19*. In addition, the Department's industry letters on this subject are available on the agency's website. (<http://airconsumer.ost.dot.gov/rules.htm>).

other additional carrier fees and charges, including insurance surcharges, must be included in the advertised fare.

The Icelandair advertisements in question, which were published during the last six months of 2002, violated these requirements in a number of ways. In many of the carrier's e-mails, prices were quoted for several destinations, but there was no mention of additional charges relating to taxes or fees and no link to a page devoted to these charges. Other advertisements mentioned destinations and prices and had a link denoted "inclusions and conditions," which spelled out the additional fees, but there was no asterisk or other distinguishing mark next to the fares directing the consumer's view to the terms and conditions section or highlighting the existence of additional fees. In other instances, advertisements stated that a separate "insurance surcharge" would apply or that "taxes and official charges (including Sept. 11 Security Fee)" were not included, but failed to give a range for these additional charges. Still other advertisements included language such as "airport taxes, personal travel insurance, transfer in Europe not included," without mentioning the September 11th Security fee or giving a range of the total additional fees or providing a link to any explanatory text.

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. The advertisement should direct the reader's attention to these exclusions through the use of an asterisk or similar mark. In the context of Internet advertisements, the requirement for proximate notation of additional charges is satisfied if the Internet advertisement has an asterisk with a note that taxes and fees are additional and provides a hyperlink to an explanation containing a full description of the taxes and fees and their amounts, as outlined above. Icelandair's promotional fare displays failed on numerous occasions to adhere to these requirements.

In mitigation, Icelandair points out that it is a small airline that has historically offered travelers some of the lowest fares to Europe. Icelandair states that it has never intended to mislead or otherwise deceive through its advertising. To the contrary, the carrier affirms that it makes every effort to ensure that the public is fully informed regarding its fare offerings and to comply with all Department requirements. While the Department found violations of its regulation, the carrier asserts that the bulk of its e-mail and web advertisements satisfy the Department's interpretation of its regulations. In addition, before any purchase could be made, the consumer, according to the carrier, was provided a detailed list of charges applicable to a selected flight, including any insurance surcharge and the September 11th Security Fee. Importantly, Icelandair stresses that it is not aware of complaints from any consumer regarding the advertisements or the travel packages offered in the advertisements. Immediately on being informed of the Department's concerns regarding its advertisements, moreover, the carrier states that it initiated a comprehensive review of all its internet advertising to ensure future advertising fully complies with the rules.

We consider any advertisement which does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84, and, while we acknowledge that Icelandair has been fully cooperative in our investigation, we believe

that enforcement action is warranted in this instance. Icelandair, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 in e-mail advertisements and on its Internet site and to an assessment of \$15,000 in compromise of potential civil penalties of which one half will be payable according to the payments schedule described below. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Icelandair, as well as by 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 Icelandair, Inc., violated 14 CFR 399.84 by advertising promotional fares on its Internet site and in e-mail advertisements which separately stated an insurance surcharge and failed to disclose adequately all additional taxes and fees, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Icelandair, Inc., violated 49 U.S.C. § 41712;
4. Icelandair, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Icelandair is assessed \$15,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above of which \$7,500 shall be paid in three equal installments of \$2,500 each. The first payment shall be due and payable 21 days after the service date of this order; the second payment shall be due and payable six months after the service date; and the third payment shall be due and payable 11 months after the service date. The remaining one-half of the compromise penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Icelandair complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Icelandair may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject Icelandair, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and 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 on the World Wide Web at
http://dms.dot.gov//reports/reports_aviation.asp