



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

Issued by the Department of Transportation  
on the 20<sup>th</sup> day of June, 2003

**British Airways, PLC  
Violations of 49 U.S.C. § 41712 and  
14 CFR 399.84**

**Served: June 20, 2003**

**OST-2003-14194**

**CONSENT ORDER**

This order concerns Internet advertisements published by British Airways, PLC, that constituted an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712, and failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. This order directs British Airways to cease and desist from future violations and to pay a compromise civil penalty.

British Airways, as a foreign air carrier, is subject to the advertising requirements of 14 CFR 399.84. 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 requires that fare advertisements by 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, as well as in newspapers and other media.<sup>1</sup> 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 and departure taxes, to be stated separately from the base fare in 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, additional carrier-imposed fees and charges, including security and insurance surcharges, must be included in the advertised base fare. Advertisements that do not include carrier-imposed fees and charges in the advertised base fare do not comply with

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<sup>1</sup> See, e.g., Icelandair, Violations of 49 U.S.C. 41712 and 14 CFR 399.84, Order 2003-4-9; Viação Aérea Rio-Grandense, S.A., Violations of 49 U.S.C. 41712 and 14 CFR 399.84, Order 2003-2-4; US Airways, Violations of 49 U.S.C. 41712 and 14 CFR 399.84, Order 2001-5-32. In addition, the Department's industry letters on this subject are available on the agency's website. (<http://airconsumer.ost.dot.gov/rules.htm>).

section 399.84 or enforcement case precedent and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

In addition, effective December 31, 2001, the Transportation Security Administration (TSA) promulgated 49 CFR Part 1510, which imposed a security service fee in the amount of \$2.50 per enplanement per passenger (with a \$10 maximum per round trip) on most air transportation originating at airports in the United States. Pursuant to section 1510.7, all direct carriers are required to identify the security service fee as the “September 11<sup>th</sup> Security Fee” in advertisements and solicitations for air transportation in which the security service fee is not included in the advertised base fare.<sup>2</sup> Failure to identify the September 11<sup>th</sup> Security Fee as required by the rule constitutes a separate and distinct unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.<sup>3</sup>

Investigation by the Department of the British Airways Internet website in December 2002 found that the carrier, through the website’s booking engine, was separating a carrier-imposed surcharge from the advertised base fares—in this case, British Airways had instituted a four dollar fee on flights to and from the United States billed as a “security and insurance surcharge.” Moreover, the website failed to identify properly the September 11<sup>th</sup> Security Fee, despite the fact that it was not included in the advertised base fares.

In mitigation, British Airways points out that, at all times in this matter, it has exhibited a cooperative and compliant attitude and has sought advice from the Department to ensure that its current and future advertising comply with the Department’s regulations and their underlying statutes. Moreover, British Airways states that the booking engine on its Internet website was designed to increase consumer benefits by consolidating the lowest fare and preferred travel dates criteria in one booking function, thereby facilitating the consumer’s ability to locate his or her optimal fare/date combination. British Airways asserts that the booking engine disclosed the existence and nature of the security and insurance surcharge via a link displayed prominently and proximately to the total price listed on the purchasing page of the website, thereby ultimately disclosing all applicable fare elements. British Airways also asserts that, since the display featured the one-way portion of round-trip fares, this link was shown as soon as the total fare was ascertainable.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously the obligation of all carriers to comply with Departmental regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. Accordingly, we have carefully considered all of the available information, including that provided by British Airways, but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and British Airways have reached a settlement of this matter. Without admitting or denying the violations described above,

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<sup>2</sup> Under Title IV of the Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. No. 108-11, 117 Stat. 557, the “Under Secretary for Border and Transportation Security of the Department of Homeland Security shall not impose the fees authorized by section 44940(a) of title 49, United States Code, during the period beginning June 1, 2003, and ending September 30, 2003.” One of the fees authorized by 49 U.S.C. § 44940(a) is the September 11<sup>th</sup> Security Fee as promulgated by 49 CFR Part 1510. Therefore, air carriers and travel agents shall not collect the September 11<sup>th</sup> Security Fee between midnight on May 31, 2003, and midnight on September 30, 2003, but must resume collecting on and after October 1, 2003.

<sup>3</sup> See, e.g., *A Better Fare, LLC, Violations of 49 U.S.C. 41712 and 14 CFR 399.84*, Order 2003-1-12.

British Airways 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 assessable. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$20,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless British Airways violates this order's cease and desist provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and British Airways may be subject to further enforcement action. The Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all carriers to comply fully with the requirements of 49 U.S.C. § 41712 and 14 CFR 399.84.

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 British Airways, PLC, violated 14 CFR 399.84 by causing to be published on its Internet website air fares in which the carrier's own security and insurance fees were stated separately from the advertised base fares and thus failed to state the entire price to be paid for such transportation;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, and by not identifying in its Internet advertisements the September 11<sup>th</sup> Security Fee by name, as required by 49 CFR 1510.7, British Airways, PLC, also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. British Airways, PLC, and all other entities owned and controlled by, or under common ownership and control of British Airways, PLC, 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. British Airways, PLC, is assessed a civil penalty of \$40,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Payment of \$20,000 shall be made within 30 days of the date of issuance of this order. The remaining \$20,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless British Airways, PLC, violates this order's cease and desist provision. Failure to pay the penalty as ordered will subject British Airways, PLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
6. Payment of the civil penalty described above 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 attached instructions.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

**By:**

ROSALIND A. KNAPP  
Deputy General Counsel

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