



**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 September, 2003

**US Airways, Inc.**

**Violations of 49 U.S.C. § 41712  
and 14 CFR 257.5(d) and 399.84**

**Docket OST-2003-14194**

**Served: September 30, 2003**

**CONSENT ORDER**

This consent order concerns newspaper and Internet advertisements published by US Airways that failed to comply with the Department's advertising rules. In the print advertisements in question, US Airways offered service to Ireland from a number of U.S. cities, but failed to note, as required by 14 CFR 257.5(d), that a portion of the service would be provided by a code-share partner. There was, in addition, at least one instance in which the carrier failed to note prominently the existence of a round-trip purchase requirement in a print advertisement. In the Internet advertisements appearing on its site and in pop-up advertisements on external websites, US Airways offered promotional fares without indicating that the quoted fares were exclusive of fees and taxes. These displays were, as a result, in violation of the full-fare advertising mandate of 14 CFR 399.84. The conduct and violations associated with the print advertisements and Internet displays, furthermore, constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Advertisements of service operated under a code-share agreement between two carriers must under 14 CFR 257.5(d) inform the consumer of the code-share relationship and identify the carrier that is actually operating the service. In its advertisements of its service between Baltimore and Ireland, published in two prominent newspapers in March 2003, however, US Airways failed to note that connecting service between Baltimore and Philadelphia would be provided by a code-share partner of US Airways and failed to provide the corporate name of that carrier.

With respect to a separate print advertisement, the Department has, as a matter of enforcement policy under section 399.84, permitted carriers to advertise each-way fares that are available only when purchased for round-trip travel so long as the round-trip purchase requirement is prominently stated in the advertisement. In a recent *Washington Post* advertisement, US Airways disclosed the requirement in a note in relatively small type face placed in an inconspicuous area of the advertisement's layout.

US Airways' Internet advertising, like its print advertising, is subject to the requirements of section 399.84 (14 CFR 399.84), which requires that in all advertising of air transportation that states a price, the price stated must be the full price to the consumer. The rule is intended to ensure that consumers receive accurate and complete fare information on which to base their airline travel purchasing decisions.<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 (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.

As they relate to Internet advertisements, the standards of section 399.84 have been further refined in Department Notices to the Industry and in recent enforcement case precedent. With respect to banner advertisements, pop-up advertisements and e-mail advertisements that utilize the web, carriers and their agents must ensure that if a fare is stated that is not the full fare, there must be an asterisk or other indicator advising readers that fees or taxes which may be stated separately are not included, and there must be a hyperlink to a screen giving the amounts of those additional charges.<sup>2</sup> In *Icelandair* (Order 2003-4-9) we stated that a promotional advertisement, quoting only a base fare, should direct the reader's attention to any exclusions through the use of an asterisk or similar mark. In the context of Internet advertisements, the requirement of proximate notation of additional charges is satisfied if the 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.

In a series of pop-up advertisements appearing on the *New York Times* website and eight other websites in late 2002 and early 2003, US Airways offered promotional fares, for the most part to Caribbean destinations, which quoted a fare but gave no indication that additional fees and taxes applied. After clicking on the pop-up advertisement, the viewer was taken to the US Airways website's promotion screen. This screen displayed fares to a number of destinations but without any indication as to whether the fares were inclusive of taxes and fees. At the bottom of the screen was a link to "Complete sale fare requirements, terms, and conditions." Only after selecting this link did the viewer find an explanation of the additional charges and a statement of their amounts. Both with respect to the off-site, pop-up advertisements and the promotional screen on the carrier's own site, the disclosure was inadequate to alert readers of the existence of additional monetary charges and failed to comply with the criteria of section 399.84. An asterisk or similar mark should appear on any pop-up or promotional advertisement that states a price that is not the full price and the mark should lead to text that informs consumers that additional

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<sup>1</sup> 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 providing guidance on this subject are available on the agency's website. (<http://airconsumer.ost.dot.gov/rules.htm>).

<sup>2</sup> If taxes and fees are prominently displayed on the same page as the base fare and in close proximity to that fare, a hyperlink is not needed.

charges apply and describes the additional charges fully. US Airway's promotional fare displays and its pop-up advertisements, as described, failed to provide a clear and proximate notation of additional taxes and fees and failed to meet the requirements of the full-fare advertising rule

In mitigation, US Airways states that the failure of the print advertisements to disclose the code-sharing relationship was inadvertent error which affected only two publications and was promptly corrected once the carrier became aware of the omission. Similarly, with respect to its each-way fare advertisement, the carrier asserts that it promptly corrected the format of its advertisement to give additional prominence to the round-trip purchase requirement. The carrier's Internet pop-up and promotional advertisements, US Airways explains, were in accord with its understanding of the Department's requirements as it provided a heading "click here for complete terms and conditions," which provided a link to a statement of all necessary disclosures. The carrier argues that the language of recent Department notices and orders is not clear regarding what is required when a pop-up advertisement holds out a sample fare to a particular region, but does not refer to any specific market, as did the advertisements in question. Moreover, the Department's June 5, 2002, notice on banner advertisements and insurance surcharges, US Airways asserts, seems to indicate that in banner advertisements a full explanation of all additional fees must appear in the advertisement itself, not in a linked page. US Airways believed that analogous requirements would apply to pop-up advertisements. In regional fare advertisements, US Airways claims, this would not be feasible since additional charges would vary by itinerary. In fact the industry practice, US Airways believes, disregards the explicit requirements of the notice and relies on links to explain additional charges in both banner and pop-up advertisements. The Department, according to the carrier, should refrain from taking enforcement action given the limited and imprecise guidance available to carriers and should consider issuing a notice of clarification.

We believe that enforcement action is warranted with respect to both the carrier's print and Internet advertising violations. US Airways' omissions of the appropriate code-share notice in its March print advertisements, while perhaps isolated occurrences, nonetheless were clear violations of the important and long-standing requirements of section 257.5. Moreover, the carrier's recent each-way fare print advertisement, which failed to provide adequate disclosure of the round-trip purchase requirement, represents a conspicuous violation of an established advertising standard, although it may reflect a similar inadvertent oversight on the part of the carrier.

With regard to the pop-up Internet advertisements, 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. US Airways argues that the precedent with regard to pop-up advertisements and the language of the June 5, 2002, notice, which it assumes applies to such advertisements, is unclear. The notice primarily had in view banner advertisements on non-air carrier and non-travel agent sites which offered percentage-off discounts but failed, when a hyperlink was selected, to send the consumer to a screen on a travel agent or carrier site where the discount could be located. While the Enforcement Office has not to date moved to enforce the literal requirements of the June 5 notice with respect to banner advertisements, this discretionary act should not be interpreted as

condoning pop-up advertisements, such as those of US Airways, or other advertisements which, stating only a base fare, make no mention of additional charges or taxes.<sup>3</sup> A pop-up advertisement or a promotional fare section on a carrier's website should, if it is listing base fares and separating out those additional charges that under Department precedent may be separately stated, alert the consumer to the existence of additional charges with an asterisked or otherwise highlighted remark in the advertisement itself. The remark advising that additional charges apply should be linked to a screen that provides full details on the additional charges and this information should not be submerged in a host of less important terms and conditions as was the case in the US Airways web display. We believe US Airways' omission of any notice regarding additional charges in the first web display of its advertised fare is a significant and clear violation of the intent of section 399.84. Moreover, we believe the US Airways web promotions at issue here, viewed in their entirety, were deceptive since it was unlikely that consumers would become aware of taxes and fees until late in the booking process. For these reasons the promotion warrants enforcement action.

US Airways, 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 14 CFR 257.5 and 14 CFR 399.84, as well as 49 U.S.C. § 41712, in its advertising practices and to an assessment of \$30,000 in compromise of potential civil penalties, of which one-half will be paid according the payment provisions described below. The remaining \$15,000 shall be suspended for one year following the service date of this order and shall then be forgiven unless US Airways 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 \$30,000 assessed penalty shall become due and payable immediately. 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 US Airways, as well as by other vendors of air transportation.

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<sup>3</sup> In correspondence with the Enforcement Office, US Airways referred to a number of websites which it claimed displayed pop-up or promotional advertisements violating section 399.84 and the Department's interpretive guidance. These advertisements, US Airways claimed, ignored the explicit requirements of the June 5 notice by failing to provide full disclosure of all terms on the first screen. We have reviewed these websites and their discount or promotional sale offerings and have found that, in most instances, the advertisements were in compliance with the Department's rules. Most of the advertisements we examined contained at least an asterisked statement alerting the consumer to the existence of additional charges, although some may not have a readily accessible link describing the additional charges in full. The omissions on these sites were, as a result, substantially less serious than the omissions occurring on the US Airways site. In addition, we intend to issue a notice to the industry offering clarification on our requirements with respect to disclosure of additional charges both on the Internet and in print advertisements.

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 US Airways, Inc., violated 14 CFR 257.5(d) by failing to advise consumers in print advertising that certain portions of its Baltimore-Ireland service was performed pursuant to a code-share agreement and by failing to provide the corporate name of the carrier actually providing the service;
3. We find that US Airways, Inc., violated 14 CFR 399.84 by advertising promotional fares on its Internet site and a number of external websites which failed to disclose the full price to be paid and by failing to note prominently in certain print advertisements the requirement of a round-trip purchase with respect to fares quoted as each-way fares;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, US Airways, Inc., violated 49 U.S.C. § 41712;
5. US Airways, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 257.5(d), 14 CFR 399.84 and 49 U.S.C. § 41712;
6. US Airways, Inc., is assessed \$30,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, of which \$15,000 shall be due and payable within 21 days after the service date of this order. The remaining \$15,000 of the compromise penalty shall be suspended for one year following the service date of this order and then forgiven, provided that US Airways 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 US Airways may be subject to further enforcement action; and
7. 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 US Airways, 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**

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