



**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 September, 2003**

**Air Jamaica, Ltd.
Violations of 49 U.S.C. § 41712,
14 CFR Part 399 and 49 CFR Part 1510**

Served: September 10, 2003

Docket OST-2003-14194

CONSENT ORDER

This order concerns newspaper, radio, television, and Internet advertisements of Air Jamaica, Ltd., (Air Jamaica) that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the U.S. Department of Transportation's regulations (14 CFR Part 399). This order directs Air Jamaica to cease and desist from future violations and to pay a compromise civil penalty.

Air Jamaica, as a foreign air carrier, is subject to the advertising requirements of Part 399. 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. 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 section 399.84 or the Department's enforcement case precedent and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.¹

¹ See, e.g., British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2003-6-29.

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 11th Security Fee” in advertisements and solicitations for air transportation in which the security service fee is not included in the advertised base fare.² Failure to identify the September 11th Security Fee as required by the rule constitutes a separate and distinct unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.³

Beginning in April 2003, Air Jamaica, through its Air Jamaica Vacations division and in conjunction with the Jamaica Tourist Board, embarked on an advertising campaign publicizing promotional fares on flights between the United States and the Caribbean. The campaign involved placing print advertisements in several major newspapers, including the *Washington Post* and the *New York Times*, as well as airing a substantial number of radio and television advertisements in numerous markets in the United States. In these advertisements, the carrier broke out a number of additional taxes and fees that it disclosed in the form of a range, rather than as a specific amount. While this method of disclosure is fully acceptable when the fees broken out of the base fare are permissible, the Office of Aviation Enforcement and Proceedings (Enforcement Office) found subsequently that Air Jamaica, in advertising its promotional fares, was separating its own carrier-imposed security and insurance surcharge from the advertised base fares, thus contravening 14 CFR 399.84. Moreover, the Enforcement Office found that the carrier was not properly identifying the September 11th Security Fee, which was included in the range of taxes and fees that were broken out from the advertised base fares.

Furthermore, the Enforcement Office’s investigation revealed that Air Jamaica’s Internet website failed to comply with 14 CFR 399.84. Specifically, the carrier failed to properly disclose the existence of taxes and fees that were in addition to various promotional fares on its website. In this regard, Air Jamaica disclosed merely that these “fares [did] not include applicable taxes and unexpected surcharges.” General phrases, such as this, that do not provide consumers with an actual, maximum, or range of taxes and fees that would enable

² 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 11th Security Fee as promulgated by 49 CFR Part 1510. Therefore, air carriers and travel agents may not collect the September 11th Security Fee between midnight on May 31, 2003, and midnight on September 30, 2003, but must resume collecting on and after October 1, 2003. At such time as that fee is collected, pursuant to 49 CFR 1510.7, carriers and their agents who elect to state this fee separately must identify the fee specifically as the “September 11th Security Fee.”

³ See, e.g., *British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-6-29; *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12.

them to determine the full fare to be paid, do not satisfy the requirements of section 399.84 or the Department's enforcement case precedent.⁴

In mitigation, Air Jamaica states it did not intend to violate the Department's regulations concerning fare advertising. Rather, Air Jamaica asserts that, when alerted by the Department, it immediately took remedial and preventive actions with respect to its advertising. Moreover, Air Jamaica points out that it is in the process of revising the procedures by which advertisements are reviewed internally before publication, and that the carrier has arranged for a special training program to be held for all of its relevant marketing personnel so that they will better understand the Department's advertising requirements. The carrier also asserts that any potential injury to travelers who might have seen the print advertisements was minimal because the advertisements provided a range of taxes and fees that enabled consumers to calculate the total cost of the airfares. Lastly, at all times in this matter, Air Jamaica notes that it has displayed a cooperative and compliant attitude.

The 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, the Enforcement Office has carefully considered all of the available information, including that provided by Air Jamaica, but continues to believe that enforcement action is warranted.⁵ In this connection and in order to avoid litigation, the Enforcement Office and Air Jamaica have reached a settlement of this matter. Without admitting or denying the violations described above, Air Jamaica consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712, 14 CFR 399.84 and 49 CFR 1510.7 and to the assessment of \$50,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$25,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$25,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless Air Jamaica violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Air Jamaica 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, 14 CFR Part 399 and 49 CFR Part 1510.

This order is issued under the authority contained in 49 CFR. 1.57a and 14 CFR 385.15.

⁴ See, e.g., *Viação-Aérea Rio-Grandense, S.A.*, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399, Order 2003-2-4; *Aerolineas Argentinas, S.A.*, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399, Order 2002-12-12.

⁵ This is particularly the case here given that the Department issued a consent order against Air Jamaica in 1996 for engaging in similar conduct with respect to its newspaper advertisements. *Air Jamaica, Ltd.*, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 96-11-20.

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 Air Jamaica, Ltd., violated 14 CFR 399.84 by causing to be published in newspaper, radio, and television advertisements air fares in which the carrier's own security and insurance surcharge was stated separately from the base fare;
3. We find that Air Jamaica, Ltd., violated 14 CFR 399.84 by causing to be published airfares on its Internet website that failed to state the entire price to be paid by the consumer;
4. We find that by engaging in the conduct and violation described in paragraph 2 and 3 above, and by not identifying in its advertisements the September 11th Security Fee by name, as required by 49 CFR 1510.7, Air Jamaica, Ltd. also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. Air Jamaica, Ltd., and all other entities owned and controlled by, or under common ownership and control of Air Jamaica, Ltd., 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;
6. Air Jamaica, Ltd., is assessed a civil penalty of \$50,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of the assessed penalty, \$25,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$25,000 shall be suspended for one year following the issuance of this order, and then forgiven unless, during this time, Air Jamaica, Ltd., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion shall be due and payable immediately. Failure to pay the penalty as ordered will subject Air Jamaica, Ltd., 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
7. 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:

SAMUEL PODBERESKY
Assistant General Counsel for
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(SEAL)

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