



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

Issued by the Department of Transportation  
on the twenty-ninth day of October, 2004

**Served October 29, 2004**

**Docket OST 2004-16943**

**Alaska Airlines, Inc., and Horizon Air,  
Inc.**

Violations of 49 U.S.C. § 41712  
and 14 CFR Part 399

**CONSENT ORDER**

This consent order concerns advertisements that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399) by Alaska Airlines, Inc., (Alaska) and Horizon Air, Inc., (Horizon), certificated air carriers. This order directs Alaska and Horizon to cease and desist from future violations and to pay compromise civil penalties.

Alaska and Horizon, as air carriers, are subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. Alaska and Horizon caused to be published in *The Tri-City Herald* in Eastern Washington and a number of other newspapers between April 15 and April 21, 2004, advertisements featuring promotional fares to more than a dozen West Coast

locations, including, for example, Oakland, Sacramento, San Diego and San Jose, California, and Reno and Las Vegas, Nevada, that failed to comply with the Department's deceptive advertising rules and enforcement case precedent covering the sale of air transportation.

Under a "Daylight Savings" banner, the printed advertisements listed about a dozen destinations with a special fare quoted next to each one. The fares ranged from \$119 to Las Vegas, to \$149 to San Diego, both from Pasco (Kennewick, Pasco and Richland), Washington. The remainder of the body of the advertisements describes the fares, well below the fares and in much smaller print, as "Each Way, based on Round-Trip Purchase."

As a matter of enforcement case precedent, the Department has permitted carriers to advertise each-way fares that are available only when purchased for round-trip travel so long as the fare is available in a reasonable quantity and the round-trip condition is disclosed prominently and proximately to the fare. "Prominently" means 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 advertisements). See, e.g., Orders 93-3-24 and 97-3-22.

The body of the Alaska/Horizon advertisements in question fails to state prominently and in close proximity to the advertised fare that the fare is an each-way fare restricted to purchases of round-trip tickets. Accordingly, these advertisements violate section 399.84. Any violation of 14 CFR 399.84 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Alaska and Horizon state that it has always been their goal to comply fully with the Department's advertising regulations. The two carriers also state that there was never any intent to mislead or deceive the traveling public; to wit, the required disclaimer - fares are "each way based upon round-trip purchase" - did appear in the advertisement even if it allegedly lacked the required prominence. Alaska and Horizon add that they have cooperated with the Department throughout this proceeding. Alaska and Horizon recount that, after being contacted by the Department, they immediately changed the size and proximity of the "each way" disclaimer in advertisements both in print and on their respective web sites, and that they are in the process of altering their procedures to prevent the recurrence of this or any other advertising error. In the future, the carriers state, any change in the format or content of legally required disclaimers in their print or Internet advertising will undergo review for legal and regulatory compliance. In addition, the carriers state that they plan to enhance their training materials covering the Department's advertising

regulations, will review them periodically to ensure that the materials remain current, and will institute revised training of all of their relevant personnel.

The Enforcement Office has carefully considered the information provided by Alaska and Horizon but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Alaska and Horizon have reached a settlement of this matter. Without admitting the violations described above, Alaska and Horizon consent to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the joint and several assessment of \$30,000 in compromise of potential civil penalties. Of this total penalty amount, \$15,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Alaska or Horizon 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 \$30,000 penalty shall become due and payable immediately, and the carriers may be subject to further enforcement action. 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 Alaska and Horizon, as well as by other air carriers and foreign air carriers.

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 Alaska Airlines, Inc., and Horizon Air, Inc., violated 14 CFR 399.84 by causing to be published advertisements that failed to state the entire price to be paid by the customer to the air carrier, for certain air transportation;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Alaska Airlines, Inc., and Horizon Air, Inc., also violated 49 U.S.C. § 41712;
4. Alaska Airlines, Inc., and Horizon Air, Inc., and all other entities owned or controlled by or under common ownership with Alaska Airlines, Inc., and

Horizon Air, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;

5. Alaska Airlines, Inc., and Horizon Air, Inc., are assessed, jointly and severally, \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$15,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Alaska Airlines, Inc., or Horizon Air, 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 \$30,000 penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Alaska Airlines, Inc., and Horizon Air, Inc., jointly and severally, 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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