



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

Issued by the Department of Transportation
on the 3rd day of February, 2004

JetBlue Airways, Inc.

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

**Served: February 3, 2004
Docket OST 2004-16943**

CONSENT ORDER

This consent order concerns print and website advertisements published by JetBlue Airways (JetBlue) that violated 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). This order directs JetBlue to cease and desist from future violations and to pay compromise civil penalties.

JetBlue, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84, any advertisement that states a price for air transportation is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the consumer to the air carrier. However, pursuant to the Department's enforcement case precedent, an air carrier is permitted to list taxes and fees that are imposed or approved by the government on a per-passenger basis separately from the advertised price so long as the nature and amounts of such taxes and fees prominently appear or are stated in the advertisement. (See, e.g., Order 97-11-14). Examples of such taxes and fees that may be listed separately from the stated airfare include Passenger Facility Charges, U.S. Departure Taxes, and Federal Segment Taxes. In contrast, taxes and fees imposed on an *ad valorem* basis must be included in the advertised fare.

In addition, effective December 31, 2001, the Transportation Security Administration implemented an Interim Final Rule, 49 CFR Part 1510, imposing a security service fee in the

amount of \$2.50 per enplanement on passengers of domestic and foreign air carriers in air transportation originating at airports in the United States. Direct air carriers and foreign air carriers must collect the security service fees imposed on air transportation sold on or after February 1, 2002. Unless the security service fees are included in an advertised fare, pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify and ensure that their agents identify the security service fees as the “September 11th Security Fee” in all advertisements and solicitations for air transportation. The failure of an air carrier to include the specific notice required by section 1510.7 in its fare advertisements is an unfair and deceptive practice in violation of 49 U.S.C. § 41712.¹

The Department has made every effort to adapt the application of these and other advertising statutes and regulations to accommodate the emergence of the Internet as a vehicle for the sale of air transportation. With respect to Internet fare listings, the Department has permitted notice of the existence and amount of taxes and fees that may properly be stated separately from the base fare to be provided through a prominent hyperlink proximate to the stated fare. (See Order 2002-3-28 (March 29, 2002)); Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfare to the Public Using the Internet, January 18, 2001, *available at* <http://airconsumer.ost.dot.gov>.)

The instant order concerns several print ads and Internet fares that contravene the mandates of § 41712 and 14 CFR 399.84. Between February and April 2003, JetBlue published ads in various newspapers that failed to include all taxes and fees in the quoted fare or separately state the amount of such taxes and fees. Specifically, these advertisements contained fares that did not include Passenger Facility Charges, U.S. Departure Taxes, Federal Segment Taxes or September 11th Security Fees, and did not list such charges elsewhere within the printed advertisements.

Similarly, between at least April 1 and April 30, 2003,² the Enforcement Office observed that JetBlue's website advertised fares that did not include Passenger Facility Charges, U.S. Departure Taxes, Federal Segment Taxes or September 11th Security Fees, and did not identify such fees in a prominent link, proximate to the stated fare, that would take a consumer to the bottom of the screen or to a separate screen where the existence, nature and amount of such fees appeared. During this time, JetBlue's website homepage – the first page reached upon entering www.jetblue.com – displayed the heading "Latest Deals & News." Under this heading were two fares. The Enforcement Office observed that no tax or fee information appeared on the homepage.

¹ 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 the 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 C.F.R. Part 1510. Therefore, air carriers and travel agents were prohibited from collecting the September 11th Security Fee between midnight on May 31, 2003, and midnight on September 30, 2003. Air carriers resumed collection of this fee on October 1, 2003.

² The problems described in this paragraph may have existed prior to April 1, 2003, but were not discovered by the Office of Aviation Enforcement and Proceedings until April 1, 2003.

Upon clicking on either of these two fares, a consumer was taken to a short paragraph with more information on the fare such as the frequency of the related flight and the base fare for a one-way ticket. The sentence, "Other restrictions apply," appeared at the end of this short paragraph. Clicking on this hyperlinked text took a consumer to the bottom of the screen where the nature and amount of additional taxes and fees first appeared. Thus, not only was there no clear notice that additional taxes and fees must be paid when fares were first listed under the "Latest Deals & News" heading, but there was a two-link separation between those fares and the paragraph containing information regarding the existence, nature and amount of applicable taxes and fees. In this regard, the Enforcement Office believes that JetBlue's website "Latest Deals & News" advertisements clearly were confusing and did not contain sufficient information in an easily and quickly accessible location regarding the additional taxes to allow a consumer to calculate the full price of the quoted airfare. The Department has consistently concluded that the failure to list the total fare as required by 14 CFR 399.84 or to provide clear notice of the existence of additional taxes and fees using a prominent hyperlink, proximate to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of additional taxes and fees appears is unfair and deceptive and an unfair method of competition in violation of 49 U.S.C. 41712. See Orders 2003-9-26 (Sept. 30, 2003), 2003-7-19 (July 14, 2003), 2003-4-9 (April 10, 2003), 2003-2-4 (Feb. 6, 2003), and 2003-1-12 (Jan. 16, 2003).³

Thus, by failing to state the full price of the fare that a consumer must pay or to comply with the Department's enforcement case precedent regarding full fare advertising, JetBlue violated 14 CFR 399.84 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712. Under 49 U.S.C. § 46301, JetBlue is subject to civil penalties of up to \$2,500 for each violation of this regulation and statutory provision and \$2,500 for each day each such violation continues.

In mitigation, JetBlue states that it immediately corrected the matters raised by the Enforcement Office and that it has taken actions within the company to insure that such errors, inadvertent though they were, are not repeated. JetBlue also points out that Enforcement Office staff recently completed a visit to JetBlue's campus and met with the relevant people to discuss these types of processes and compliance issues, which reinforced its commitment to ensure compliance. JetBlue states that it is a low fare, low cost airline which has achieved success and profitability primarily due to its intense focus on its customers. JetBlue asserts that it wants its customers to be fully informed and prides itself in providing full and complete information to its customers so that their decisions to purchase tickets for flights on JetBlue are based upon their complete understanding of the company's fares and services.

The Aviation Enforcement Office has carefully considered all of the facts of this case, including the information provided by JetBlue and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. The Aviation Enforcement Office and JetBlue have reached a settlement of this matter in order to avoid litigation. JetBlue 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 \$25,000 in compromise of potential civil penalties. Of that amount, \$12,500 is due and payable within 15 days of the date of service of this order and

³ See American Airlines, Inc., Doc. No. 15046-18, *3 (August 21, 2003) (order of Administrative Law Judge Burton S. Kolko citing as Department precedent consent orders entered into between air carriers and the Office of Aviation Enforcement and Proceedings that had not been challenged within the period of time provided by Department regulations and had not been reversed by the Department).

the remaining \$12,500 will be forgiven if JetBlue does not violate this consent order for a period of one year from the date of its entry. 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 JetBlue, as well as by other airlines, travel agents, and 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 JetBlue Airways has violated 14 CFR 399.84 by publishing print and Internet fare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, JetBlue Airways also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. JetBlue Airways, and all other entities owned and controlled by, or under common ownership and control with, JetBlue Airways, 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. JetBlue Airways is assessed \$25,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of this amount \$12,500 shall be due and payable within 15 days of the service date of this order. The remaining \$12,500 shall be suspended for one year following the service date of this order and then forgiven, provided that JetBlue complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if JetBlue fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and JetBlue 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.

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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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