



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

**Issued by the Department of Transportation
on 13th day of May , 2004**

**Brendan Airways, LLC, d/b/a
USA3000 Airlines**

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

Docket OST 2004-16943

Served May 13, 2004

CONSENT ORDER

This consent order concerns advertisements by Brendan Airways, LLC, d/b/a USA3000 Airlines (USA3000), that violate the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399) and constitute an unfair and deceptive practice prohibited by 49 U.S.C § 41712.

In February 2004, USA3000 caused to be published a series of newspaper advertisements in which the carrier broke out from its advertised base fares a carrier-imposed "fuel surcharge." For example, the carrier's advertisement in the February 13th edition of the *New York Times* listed two package prices with a fine print disclaimer that "Fares do not include up to \$18 in Airport passenger facilities charges (PFCs) where applicable and the September 11th Security Fee up to \$10 per itinerary, *Fuel surcharge \$3.00 per sector*" (emphasis added).

As an air carrier, USA3000 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 fuel surcharges, must be included in the advertised base fare. Advertisements that do not include carrier-imposed fees and charges in the advertised base fare, such as those of USA3000 described above, 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

In mitigation, USA3000 maintains that it did not intend to violate the Department's advertising regulations. The carrier states that, prior to inquiry by the Department, it caught and corrected the problem. It first stopped separating its fuel surcharge from the base fares in its newspaper advertisements. Next, at a considerable administrative cost, USA3000 voluntarily refunded fuel surcharges of approximately \$83,000 to all of the consumers who had purchased tickets during the approximately two week period that the surcharge was in effect. In addition, the carrier 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 future operations comply with the Department's advertising requirements.

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, the Enforcement Office has carefully considered all of the available information, including that provided by USA3000, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and USA3000 have reached a settlement of this matter. Without admitting or denying the violations described above, USA3000 consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84.² 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 Part 399.

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;

¹ See, e.g., Continental Airlines, Inc., Violation of 14 CFR Part 399 and 49 U.S.C. § 41712, Order 95-1-39.

² In deciding not to pursue a civil penalty in this matter, the Enforcement Office took into account USA3000's refund to consumers of all monies collected for fuel surcharges, as well as the substantial administrative costs associated therewith.

2. We find that Brendan Airways d/b/a USA3000 Airlines violated 14 CFR 399.84 by causing to be published airfares in newspaper advertisements in which the carrier's own fuel surcharge was stated separately from the base fare;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Brendan Airways d/b/a USA3000 Airlines also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712; and
4. Brendan Airways d/b/a USA3000 Airlines and all other entities owned and controlled by, or under common ownership and control of Brendan Airways d/b/a USA3000 Airlines 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.

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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