



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

Issued by the Department of Transportation
on the Seventeenth Day of October, 2005

Docket OST-2005-20077

ATA Airlines, Inc.

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

Served October 17, 2005

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 ATA Airlines, Inc. (ATA), a certificated air carrier. This order directs ATA to cease and desist from future violations and assesses compromise civil penalties of \$60,000.

ATA, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules. Under section 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.

The Department has as a matter of enforcement policy permitted the listing in price advertisements of "each way" fares that require purchase on a round-trip basis, provided that the round-trip condition is prominently displayed. "Prominently" means in proximity to the advertised fare and 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 ads). See, *e.g.*, Order 93-3-24.

ATA caused to be published in November and December 2004, and in January through April 2005, advertisements in numerous newspapers that promoted short-term sales of special domestic and international airfares that were "each way" fares available only when purchased on a round-trip basis. The ATA advertisements generally follow a design under which the left-hand half, or the top third, of the advertisement lists in very large type an inexpensive fare. The phrase -- "Above fare is off-peak, each way based on 7-day [or 3-day] advance purchase for coach class" - appears below the large fare price. The type size used for this qualifying phrase is, however, quite small, often as small or smaller than the fine print at the bottom of the ad, and frequently less bold than the fine print. In all of these advertisements, the body does not state prominently and in close proximity to the advertised fare that the fare is an each-way fare requiring an advance round-trip purchase.

In addition, one of the ATA advertisements, entitled -- "The ATA Fly Now, Play Later Sale." -- that appeared in *The Washington Post* on April 7, 2005, does not include any statement that the fare is "each way" and based on advance round-trip purchase proximate to the large type, bold airfare quotation.

As published, the ATA advertisements violate section 399.84 of the Department's regulations. Any violation of 14 CFR 399.84 also constitutes a violation of 49 U.S.C. § 41712. We are particularly concerned about these advertisements because ATA was given a verbal warning previously.

In mitigation, ATA states that while it concedes that some of its advertisements may not have conformed to the Department's definition of "prominently," it disagrees that all of this group of its advertisements were in violation of the Department's rules. In ATA's view, moreover, the advertisement that appeared in *The Washington Post* on April 7, 2005, which failed to include a statement that the fare is "each way," was an isolated event directly attributable to human error. Finally, ATA declares that as an indication of its good faith and lack of intent to engage in any deceptive practices, it has offered to work with the Department to review, in advance of publication, its print advertising to assure that all of it fully complies with the Department's rules.

The Enforcement Office has carefully considered the information provided by ATA but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and ATA have reached a settlement of this matter. ATA consents 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 assessment of \$60,000 in compromise of potential civil penalties. Of this total penalty amount, \$30,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$30,000 shall be suspended for one year following issuance of this order, and then forgiven, unless ATA 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 \$60,000 penalty shall become due and payable immediately, and the company 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 ATA, 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 ATA Airlines, 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, or agent, for certain air transportation;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, ATA Airlines, Inc. also violated 49 U.S.C. § 41712;
4. ATA Airlines, Inc., and all other entities owned or controlled by or under common ownership with ATA Airlines, Inc., and their successors and assignees, are ordered to cease and desist from violations of 14 CFR 399.84 and 49 U.S.C. § 41712;

5. ATA Airlines, Inc. is assessed \$60,000 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, \$30,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$30,000 shall be suspended for one year following issuance of this order, and then forgiven, unless ATA 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 \$60,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject ATA to the assessment of interest, penalty, and collection charges under the Debt Collection Act, as well as possible enforcement action for failure to comply with this order;
6. Payment by ATA Airlines, Inc., 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.

*An electronic version of this document is available
on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*