



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

Issued by the Department of Transportation
on the 11th day of October, 2005

El Al Israel Airlines, Ltd.

Docket OST 2005-20077

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

Served October 11, 2005

CONSENT ORDER

This consent order concerns advertisements on the web site of El Al Israel Airlines, Ltd. (El Al), (www.elal.co.il), as well as certain printed air fare advertisements published by the carrier, that stated separately a fuel surcharge in violation of 14 CFR 399.84, the Department's rule on full fare advertising. These advertisements, in addition, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Based on these violations, the order assesses a compromise civil penalty of \$20,000 and directs the carrier to cease and desist from future similar violations.

In an advertisement published in April 2005, for service between Baltimore and Tel Aviv by way of New York, El Al announced a round-trip fare, but in small print noted that applicable taxes, whose amount was stated, and a \$40 fuel surcharge were not included. A similar notice appeared in displays of fare quotations on El Al's website where, through a hyperlink, the site disclosed taxes from U.S. points of origin and stated that a fuel surcharge of \$38 applied to flights to and from U.S. and Canadian points.

The assessment of a fuel surcharge, separate from an advertised base fare, is in clear violation of the Department's full fare advertising rule, 14 CFR 399.84, and its well-established enforcement case precedent. Section 399.84 requires that any advertising of passenger air transportation, a tour, or a tour component that states a price must state the full price to be paid by the consumer. Pursuant to its enforcement case precedent, the Department permits taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges and departure taxes, to be stated separately in fare advertisements so long as the charges are 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. (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, February 3, 2004; *Icelandair*, Order 2003-4-9, April 10, 2003; Notice entitled "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including

'Free' Airfares," dated September 4, 2003; and Notice entitled "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.) Fuel surcharges, however, are not among these exceptions and must be included in the advertised fare.¹ Violations of section 399.84, as noted above, also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In mitigation, El Al states that it promptly revised its advertising practices in response to the inquiry of the Office of the Aviation Enforcement and Proceedings. In addition to promptly ceasing the publication of printed advertisements containing the separately stated fuel surcharge, El Al suspended web sales for service to the U.S. while its website was revised to include the surcharge in the base fare, a process that was completed in less than two weeks. The carrier states that by suspending its Internet sales during this interval it may have sacrificed significant passenger revenue. A review of the carrier's website indicates that its fare displays are now in compliance with the requirements of section 399.84, no longer showing a separate fuel surcharge.

We acknowledge that El Al has cooperated fully in our investigation; however, we believe that enforcement action is nonetheless warranted in this instance. El Al, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees 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 an assessment of \$20,000 in compromise of potential civil penalties. Of this penalty, one-half will be payable according to the payment schedule described below and the remainder will be suspended for one year following service of this order, at which time it will be forgiven provided the carrier complies with the terms of this order and is involved in no further similar violations in the interim. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by El Al, as well as by 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;

¹ El Al pointed out that the amount of the fuel surcharge, while omitted from the base fare, was stated elsewhere in its advertisements so that the consumer could calculate the total fare. This, El Al argues, is in contrast to the cases involving Jet Blue and Icelandair, cited above, where the carriers had not disclosed the amount of the surcharge in their respective advertisements. Disclosure of the amount of the surcharge in the advertisement, however, is not sufficient to comply with the requirements of section 388.94; the surcharge must be included in the advertised base fare. See *Northwest Airlines Inc.*, Order 2001-8-1.

2. We find that El Al Israel Airlines, Ltd., violated 14 CFR 399.84 by publishing fare quotations in printed advertisements and on its website that stated a fuel surcharge separately from its initial fare quote, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, El Al Israel Airlines, Ltd., has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. El Al Israel Airlines, Ltd., its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. El Al Israel Airlines, Ltd., is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$10,000 shall be due and payable within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that El Al complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and El Al 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. Failure to pay the penalty as ordered shall also subject El Al Israel Airlines, Ltd., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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:

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(SEAL)

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