



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

Issued by the Department of Transportation
on the 20th day of May, 2005

Scandinavian Airlines System (SAS)

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

Docket OST 2005-20077

Served May 20, 2005

CONSENT ORDER

This consent order concerns advertisements on Scandinavian Airlines System's (SAS) website and website advertisements of the carrier disseminated by a third party that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. These advertising practices, in addition, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Assessing a compromise civil penalty of \$25,000 based on these violations, the order also directs the carrier to cease and desist from future similar violations.

In a recent "SAS Early Bird Summer Sale" advertisement displayed on the carrier's website (<http://www.scandinavian.net>), the carrier offered fares with the caveat that "taxes and other fees are not included." The fare quotations were not accompanied by an adjacent asterisk or other mark to indicate that other charges applied and the note at the bottom of the screen referring to added costs did not contain a hyperlink to a page explaining those charges. In addition to these discrepancies on the carrier's website, an SAS website advertisement subsequently distributed in a third-party's weekly e-mail bulletin dated February 14 referred to unspecified surcharges imposed by the carrier in addition to the advertised fares.

To ensure that consumers receive accurate and complete fare information on available air fares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged the consumer. These requirements extend to advertisements on Internet sites.¹ Violations of section 399.84, moreover, constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Under enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes,

¹ See, e.g.: *JetBlue Airways, Inc.*, Order 2004-2-4; *Spirit Airlines, Inc.*, Order 2003-12-26; *Icelandair, Inc.*, Order 2003-4-9, and cases cited therein. In addition, the industry letters on this subject are available at <http://airconsumer.ost.dot.gov/rules.htm>.

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. However, carrier-imposed fees and charges, such as fuel surcharges, must be included in the advertised fare.

The SAS advertisements in question, which appeared over a period of one month in early 2005, violated these requirements. The website sale should have included an asterisk alerting consumers to the existence of added fees and there should have been a hyperlink to an explanation of those fees and their amounts. In the carrier's website fare advertisements subsequently distributed in the third-party's e-mail bulletin, the specific language stated that "taxes, fees and surcharges" were not included in the fare, but gave a range of approximate charges. These advertisements also listed the September 11th Security fee separately. The language was, according to the carrier, lifted from the SAS website, although the advertisement itself, as it appeared in the e-mail, was not prepared or authorized by the carrier. However, the surcharges, which were apparently fuel surcharges, appeared on the SAS website as part of a Valentine Day sale for several weeks in early 2005 in violation of section 399.84.²

In mitigation, SAS states that it immediately revised its displays to include the required asterisk and link on its sale fares after it was advised of the problem. With respect to the third-party e-mail, the carrier states that it had no role in preparing the advertisement and did not authorize it. The carrier states that it has undertaken a thorough review of its site to ensure that any carrier-imposed surcharges are included in the advertised base fare and that all fare quotes have adjacent notations advising consumers of additional fees and taxes that may properly be stated separately from the base fare.

We acknowledge that SAS has been fully cooperative in our investigation; however, we believe that enforcement action is nonetheless warranted in this instance. SAS, 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 \$25,000 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below. 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 SAS, 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.

² The e-mail advertisement also lacked a hyperlink explaining fully the various taxes and fees, although the notice of the September 11th Security fee appeared to be appropriate.

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 Scandinavian Airlines System violated 14 CFR 399.84 by advertising fares on its Internet site without proper disclosure of additional fees and taxes, and by advertising and assessing a separate surcharge on certain sale fares, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Scandinavian Airlines System has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Scandinavian Airlines System, 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. Scandinavian Airlines System (SAS) is assessed \$25,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$12,500 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 SAS 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 SAS 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 Scandinavian Airlines System 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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*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*