



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

Issued by the Department of Transportation
on the 5th day of July, 2005

Société Air France

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

Docket OST 2005-20077

Served July 5, 2005

CONSENT ORDER

This consent order concerns certain fare advertisements on Air France's U.S. website (www.airfrance.com/us) 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. Based on these violations, the order assesses a compromise civil penalty of \$29,500 and directs the carrier to cease and desist from future similar violations.

To ensure that consumers receive accurate and complete 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 Under its enforcement case precedent, the Department has allowed certain taxes and fees to be stated separately in fare advertisements provided that the consumer is informed of these charges in conveniently accessible text. Fees or charges may be listed separately provided that they 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. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. However, carrier-imposed fees and charges, such as fuel surcharges, must be included in the advertised fare.

Certain Air France website advertisements, in late 2004 and early 2005, violated these Department requirements by displaying fares which did not include a fuel surcharge and which listed additional taxes and fees inappropriately. The website, in addition, offered sale fares on its initial screen without noting that additional fees and charges applied,

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, industry letters on this subject are available at <http://airconsumer.ost.dot.gov/rules.htm>.

although the screen did include the fuel surcharge. In subsequent screens, after a consumer selected an itinerary, the website gave information regarding taxes and fees but did not separately list the September 11th Security Fee.²

The carrier, in response to the inquiries of the Office of Aviation Enforcement and Proceedings, has revised its U.S. website to include the fuel surcharge in all base fares. The website has also been revised to provide an asterisk adjacent to its advertised sale fares on its initial screen with a link to an explanation that states that the fares exclude government-imposed taxes and fees and provides the nature and amount of those charges. In fare quotes for specific itineraries, Air France has revised its language on taxes and fees to give specific notice of the September 11th Security Fee.

In mitigation, Air France states that it promptly revised the initial screen of its website to include a required asterisk and link with the appropriate disclosure statement on its sale fare listings after it became aware of the problem. The fuel surcharge was excluded, the carrier points out, only in one set of screen displays and was always included in the final fare quotation shown to consumers before booking. After consultation with the company that provides the booking engine used on its website, Air France has included the fuel surcharge in the fares displayed on the one set of screens where it had previously been excluded. Air France, moreover, has revised certain displays to place the tax and fee amount on the same screen with the fare and to list the September 11th Security Fee appropriately.

We acknowledge that Air France has cooperated fully in our investigation; however, we believe that enforcement action is nonetheless warranted in this instance. Air France, 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 \$29,500 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 Air France, 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 49 CFR Part 1510, which imposes a security service fee on most air transportation originating in the United States, requires all direct carriers to identify the fee as the "September 11th Security Fee " in advertisements in which it is not included in the advertised base fare. Failure to identify the September 11th Security Fee as required by the rule constitutes a separate and distinct unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

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 Société Air France violated 14 CFR 399.84 by advertising fares on its Internet site without proper disclosure of additional fees and taxes, and by failing to include a separate fuel surcharge in certain fares displayed on its website, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Société Air France has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Société Air France, 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. Société Air France is assessed \$29,500 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$14,750 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 Société Air France 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 Société Air France 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 Société Air France 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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