



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

Issued by the Department of Transportation
on the 1st day of November, 2006

Aloha Airlines, Inc.
Violations of 49 U.S.C. § 41712 and
14 CFR Part 399

Served November 1, 2006

OST 2006-23528

CONSENT ORDER

This order concerns advertisements by Aloha Airlines, Inc., (Aloha) on the carrier's Internet website that failed to comply with the Department's rule on fare advertising, 14 CFR 399.84, and thereby violated the statutory proscription in 49 U.S.C. § 41712 against unfair and deceptive practices. This order directs Aloha to cease and desist from future violations and assesses the carrier a compromise civil penalty of \$25,000.

Aloha, as an air carrier, is subject to the advertising requirements of Part 399. To ensure that consumers 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 precedent¹, the Department has allowed taxes and fees, such as passenger facility charges and departure taxes, that are collected by carriers and other sellers of air transportation to be stated separately from the base fare in 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. Violations of section 399.84 constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

During a recent period of time, Aloha's Internet website did not disclose taxes and fees that were in addition to its advertised base fares at the *first* point on the website where those base fares were presented. Instead, after entering a proposed itinerary, consumers were initially

¹ See, e.g., *British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-6-29 (June 20, 2003). In addition, the Department's industry letters regarding the full fare rule and other advertising requirements relating to the sale of air transportation are available at <http://airconsumer.ost.dot.gov/rules.htm>.

given a webpage containing lists of outbound and return flights along with only the base fares applicable to each of those flights. Then, after making their flight selections, consumers were given, on a second webpage, a total price, which comprised the sum of the base fares for each flight and the applicable taxes and fees. It was only after reaching this second webpage that consumers were made aware of the existence and amount of the additional taxes and fees. The Department has found Internet booking processes configured in this manner that do not provide proper notice of the nature and the amount of additional taxes and fees on the first webpage where a base fare is presented to be a violation of the full fare advertising rule and section 41712.²

In mitigation, Aloha believes that its website at all times provided customers, prior to any purchase of transportation, with full and accurate disclosure of applicable fees and taxes and the total amount to be paid for transportation. In Aloha's opinion, the issue which is the subject of this consent order involves the placement of an additional, duplicative, disclosure, and not a failure to disclose, and Aloha believes that its behavior created no risk of consumer deception. Aloha states that its error was inadvertent, of short duration, and involved only one of two booking pathways on its website. Finally, Aloha states that it has cooperated fully with the government's investigation in this matter and has implemented corrective measures promptly.

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 Aloha Airlines, Inc., but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Aloha Airlines, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Aloha Airlines, Inc., 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 and to the assessment of \$25,000 in compromise of potential civil penalties otherwise assessable. Of this amount, \$12,500 shall be paid under the terms described below. The remaining \$12,500 shall be suspended for 12 months following the service date of this order and then forgiven unless Aloha Airlines, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Aloha Airlines, Inc., may be subject to additional enforcement action. The compromise assessment 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 399.84.

This order is issued under the authority contained in 49 CFR. 1.57a and 14 CFR 385.15.

² See, e.g., *Aer Lingus Limited, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2004-5-9 (May 6, 2004).

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 Aloha Airlines, Inc., violated 14 CFR 399.84 by publishing airfares on its Internet website that failed to state the entire price to be paid by the consumer.
3. We find that by engaging in the conduct and violation described in paragraphs 2 above, Aloha Airlines, Inc., and engaged in unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Aloha Airlines, Inc., and all other entities owned and controlled by, or under common ownership with Aloha Airlines, Inc., and their successors and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84.
5. We assess Aloha Airlines, Inc., a civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this amount, \$6,500 shall be due and payable on November 20, 2006, and \$6,000 shall be due and payable on February 20, 2007. The remaining \$12,500 shall be suspended for 12 months after the service date of this order, and then forgiven unless Aloha Airlines, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Aloha Airlines, Inc., may be subject to additional enforcement action.
6. Payments required by this order shall be made by wire transfers through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Aloha Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to 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 unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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