



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

Issued by the Department of Transportation
On the 9th day of December, 2016

Frontier Airlines

**Violations of 14 CFR Part 399.84(a)
and 49 U.S.C. § 41712**

Served: December 9, 2016

Docket OST-2016-0002

CONSENT ORDER

This order concerns violations by Frontier Airlines, Inc. (Frontier) of the full-fare advertising rule, 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Frontier to cease and desist from future similar violations and assesses the carrier \$60,000 in civil penalties.

Applicable Law

As an air carrier, Frontier is subject to the advertising requirements of Part 399 of the Department's rules. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, 14 CFR 399.84 provides in relevant part that the Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component.

Although charges included within the single total price listed (e.g., government taxes) may be stated separately or through links or "pop ups" on websites that display the total price, such

charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. Advertising a fare that is not in accordance with the full fare requirements of section 399.84 constitutes an unfair and deceptive trade practice under 49 U.S.C. § 41712.

Facts and Conclusions

In September 2015, Frontier displayed advertisements that offered air fares for “a buck” or “\$1 + taxes and fees.” These advertisements appeared in various forms, including email, Frontier’s website, and social media.

Email Advertisement

On or around September 2, 2015, Frontier disseminated an email with the subject line “TODAY ONLY: Fly for only a buck...” The contents of the email included an advertisement graphic with the headline “TODAY ONLY, WE’VE GOT \$1 + TAXES AND FEES (\$15 TOTAL) FARES!” The \$1 and \$15 quotes from the headline appear in the same font, style, and size.

Website

Frontier’s website contained a page in September 2015 that included a banner at the top of the page advertising ten-dollar fares. Specifically, the banner included ten pictures of Frontier’s buck animal mascot and a diagonally placed message that stated, “JUST ADDED: More 10 buck fares!” The banner stated “TEN·BUCKS·TO...WE’VE GOT \$10 + TAXES AND FEES (\$24.10* TOTAL) FARES!” The \$10 and \$24.10 quotes appeared in the same font, style, and size, and the phrase “TEN BUCKS TO” appeared in a font larger than that of the \$10 and \$24.10 quotes.

Social Media

On September 2, 2015, Frontier posted to its Facebook page the same advertisement graphic contained in the email described above. The text accompanying the advertisement stated “Buck Fares! Fly Frontier for fares as low as \$1! (\$15 total w/taxes) Buy by 9/2/15 Fly 9/2/15-9/16/15.”

On September 9, 2015, Frontier posted on its Twitter account the following text:

“@jasminenkelly thx! We do have \$1 last min fare sales today to select locations bit.ly/BuckoRama ^db”

The same Twitter account posted on September 10, 2015, an advertisement graphic that stated in large sized font, “BUCK FARES TO MEXICO!” At the bottom of the graphic, and in smaller sized font, the text states, “\$1 + TAXES & FEES = \$49* TOTAL.” On September 16, 2015, Frontier posted on its Twitter account the same banner that it displayed on its website, as described above.

The above-described advertisements violate 14 CFR 399.84. In particular, Frontier has advertised base fares (without taxes and fees) in the same sized font as the total fare inclusive of taxes and fees. In addition, Frontier's email advertisement is problematic in that the carrier advertises only the base fare ("a buck") in the email subject line, in violation of the requirement that charges included within the single total price, which may be stated separately, may not be false or misleading and may not be displayed prominently. Such conduct also violates the Department's prohibition against unfair or deceptive conduct in 49 U.S.C. § 41712.

Response

In response, Frontier states that it does not believe that its advertisements were false or misleading and that the total, all-in full fare was clearly and accurately displayed, that the advertisements did not hide the full fare or deceive consumers, and that the base fare (without taxes and fees) was not in a font larger than the all-in full fare. Frontier further asserts that it received no complaints about the fare display in the advertisements at issue. Frontier further states that the reference to "Bucks" was intended to be a reference to the airline's animal mascot, as evidenced by the pictures of, depending on the advertisement, one or ten "Buck" animals in the advertisements - not to U.S. dollars. Finally, immediately after the Department advised Frontier of its concerns with the advertisements, Frontier took corrective actions, including (i) providing additional training to those responsible for content and production of advertisements and (ii) implementing a "double approval" requirement for each advertisement such that two Frontier employees must review and approve each advertisement prior to its posting or publication.

Decision

The Enforcement Office views seriously Frontier's violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting the violations described above, Frontier consents to the issuance of this order to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712 and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Frontier and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

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 Frontier violated 14 CFR 399.84(a) by advertising base fares, such as the "Buck Fares," in the same font size as the corresponding total fares;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Frontier has violated 49 U.S.C. § 41712;
4. We order Frontier and its successors and assigns to cease and desist from further violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712;
5. We assess Frontier a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations described above; and
6. Of this total amount, \$30,000 shall be due and payable within 30 days from the date of issuance of this order. The remaining \$30,000 shall become due and payable if, within one year of the service date of this order, Frontier violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Frontier may be subject to additional enforcement action for failure to comply with this order; and
7. We order Frontier to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Frontier to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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