



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 September 2007

Iberia Lineas Aereas de Espana, S.A. (Iberia Airlines)

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

OST-2007-26781

Served: September 20, 2007

CONSENT ORDER

This consent order concerns radio advertisements by Iberia Lineas Aereas de Espana, S.A., (Iberia Airlines) 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 Iberia Airlines to cease and desist from future violations and assesses the carrier a compromise civil penalty of \$35,000.

Iberia Airlines, 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. Fuel surcharges and other carrier-imposed surcharges are not among these exceptions and must be included in the advertised fare. Violations of section 399.84 constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

From April 9 until May 18, 2007, Iberia Airlines broadcast advertisements offering a fare of \$699 roundtrip from Washington to Madrid on three radio stations in the Washington D.C.

¹ See, e.g., JetBlue Airways, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2004-3-4 (February 3, 2004); see also "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003, and the industry letter dated July 14, 1995, available at <http://airconsumer.ost.dot.gov/rules/guidance/htm>.

metropolitan area. From April 9, until May 11, 2007, Iberia Airlines broadcast similar advertisements offering a fare of \$549 roundtrip from Boston to Madrid on a number of radio stations that aired in 11 New England metropolitan areas. Both broadcast advertisements state, "We fly 5 times a week for as low as 699 [549] roundtrip, subject to availability. Terms and conditions apply. For more details go to www.iberia.com or call 1-800-772-4642." Neither applicable taxes nor fees as charges in addition to the base fare are explicitly disclosed to the listener, in contravention of the requirements of Part 399.

In mitigation, Iberia Airlines states that these short-term promotional advertisements, the carrier's first radio advertising in the United States in over 20 years, were developed by TAPSA, an advertising agency in Spain. TAPSA, which had been informed about the Department's fare advertising rules, apparently believed that it was sufficient for the advertisement to refer to "terms and conditions," as well as to the carrier's website and toll-free number for "more details," in order to comply. Iberia Airlines acknowledges that it should have caught TAPSA's errors, but that there was no intent to mislead listeners. The carrier points out that its newspaper advertisements appearing in the Boston Herald, the Boston Globe, the Washington Post and the Washington Times promoting these same fares from February to April 2007, and on its website, were fully compliant. Iberia Airlines further states that no listeners lodged complaints with the carrier regarding the radio advertisements.

The Enforcement Office views seriously the obligation of all carriers to comply with Departmental regulations and to observe the statutory prohibitions against engaging in unfair and deceptive practices. Accordingly, the Enforcement Office has carefully considered all the available information, including that provided by Iberia Airlines, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Iberia Airlines have reached a settlement of this matter. Iberia Airlines consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 299.84 and to the assessment of \$35,000 in compromise of potential civil penalties otherwise applicable, half of which will be forgiven in one year if the carrier complies with this order during that period. 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.

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 Iberia Airlines violated 14 CFR 399.84 by broadcasting radio advertisements 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 paragraph 2 above, Iberia Airlines engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

4. We order Iberia Airlines and all other entities owned and controlled by, or under common ownership with Iberia Airlines, 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 Iberia Airlines a civil penalty of \$35,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of this amount, \$17,500 shall be due and payable within 15 days after the service date of this order. The remaining \$17,500 shall be suspended for one year following the service date of this order, and then forgiven unless Iberia Airlines violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Iberia Airlines 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 Iberia Airlines, 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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