



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

Issued by the Department of Transportation
on the 29th day of May 2008

AirTran Airways, Inc.

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

Docket OST 2008-0031

Served May 29, 2008

CONSENT ORDER

This consent order concerns fare displays by AirTran Airways on its website (www.airtran.com) that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. The carrier's website failed to include fuel surcharges applicable to advertised fares in certain markets. 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, this order assesses a compromise civil penalty of \$45,000 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. Under its enforcement case precedent, the Department has allowed certain taxes and fees described below to be stated separately in fare advertisements, provided that the consumer is informed of these charges in conveniently accessible text. However, carrier-imposed fees and charges, such as fuel or insurance surcharges, must be included in the advertised fare.

Fees or charges may be listed separately, under Department precedent, 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. On Internet displays, these charges may be noted through a prominent link, placed adjacent to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.¹

¹ (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, *Grand Circle Corporation*, Order 2006-7-23, and *AHI Travel International Corp.*, Order 2008-3-5 and orders cited therein, and the

The AirTran website, in late 2007, violated these Department requirements by displaying fares which did not include a fuel surcharge. Information on the fuel surcharge the carrier applied in certain markets was deferred to secondary screens after the consumer had selected an itinerary; such charges must be included in the base advertised fare. The carrier, in response to the inquiries of the Office of Aviation Enforcement and Proceedings, has revised its site to include the fuel surcharge in all base fares. The revised website also provides a link adjacent to fares displayed on its initial screen with an explanation of the nature and amount of those charges.

In mitigation, AirTran states that the fuel surcharge was incorrectly displayed because of an oversight in its internal review process that in the normal course would have identified the incorrect display. AirTran notes that the fuel surcharge at that time did not apply to all fares and staff was attempting to inform the consumer of those fares to which the announced surcharge did apply.

We acknowledge that AirTran has cooperated fully in our investigation; however, we believe that enforcement action is nonetheless warranted in this instance. AirTran, 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 \$45,000 in compromise of potential civil penalties of which \$22,500 shall be paid within 30 days of the date of service of this order. The additional \$22,500 will become immediately payable if AirTran violates the provisions of this order within the one-year period following issuance of this order. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest.² This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by AirTran, 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.

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 AirTran Airways, Inc., violated 14 CFR 399.84 by failing to include fuel surcharges in certain advertised fares, as described above;

notice entitled, "Disclosure of Additional Fees, Charges and Restrictions on Airfares in Advertisements, Including 'Free' Airfares," which is dated September 4, 2003, as well as guidance letters to the industry which can be found at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>).

² AirTran is also directed to provide the Aviation Enforcement Office 14 days advance notice of any substantive changes in the displays of fares or fees and charges on its website during the year following the service date of this order.

3. We find that by engaging in the conduct described in paragraph 2, above, AirTran has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. AirTran Airways, Inc., is also directed to provide the Aviation Enforcement Office 14 days advance notice of any substantive changes in the displays of fares or fees and charges on its website during the year following the service date of this order;
5. AirTran Airways, Inc., 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;
6. AirTran Airways, Inc., is assessed \$45,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$22,500 shall be due and payable within 30 days of the service date of this order. In addition, if AirTran violates the provisions of this order within the one-year period following the service date of this order, the carrier shall pay an additional amount of \$22,500 within 15 days of being notified of the violation by the Office of Aviation Enforcement and Proceedings; and
7. 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 AirTran Airways 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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Deputy General Counsel

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