



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

Issued by the Department of Transportation
On the 30th day of December, 2008

Air Jamaica, Ltd.

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

Docket OST 2008-0031

Served December 30, 2008

CONSENT ORDER

This consent order concerns fare displays by Air Jamaica, Ltd. (Air Jamaica) on its website (www.AirJamaica.com) 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, this order assesses a compromise civil penalty of \$105,000 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 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

For some time, Air Jamaica advertised fares on its website, that did not include certain carrier-imposed fees, such as fuel surcharges. Moreover, some fare displays excluded notice of the nature and amount of applicable government-imposed taxes and fees that may properly be listed separately until the consumer had confirmed his or her itinerary. The carrier, in response to the inquiries of the Office of Aviation Enforcement and Proceedings, promptly revised its site to include the carrier-imposed charges in question in all base fares and to properly disclose government-imposed taxes and fees. However, Air Jamaica's past conduct violates 14 CFR 399.84 of the Department's regulations and constitutes a deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

The violations are of particular concern to us because this is not the first time Air Jamaica has violated the Department's advertising requirements. Previous similar violations were resolved by means of Consent Orders 96-11-20 and 2003-9-5. Under these orders, Air Jamaica was directed to cease and desist from further violations of the Department's full fare advertising regulation and 49 U.S.C. § 41712.² Its conduct here constitutes a separate violation of the cease and desist provisions of these orders.

In mitigation, Air Jamaica states that it takes seriously its compliance with DOT rules and its obligations to advertise and sell airfares to consumers in a transparent and lawful manner, that it in no way intended to mislead customers, and that it at all times cooperated with the Department in resolving this matter. Air Jamaica further states that it promptly removed the non-compliant fare displays from its website and has completely eliminated its fuel surcharges. As a result, Air Jamaica has incurred significant expenses as it works with its website booking vendor to develop and reestablish competitive website search and fare display functions that comply with the Department's full fare advertising rule. Finally, Air Jamaica states that it has introduced a series of internal oversight procedures to ensure that fare advertising problems do not recur.

We have carefully considered all the facts in this case, including those put forth by Air Jamaica as noted above; however, we believe that enforcement action is warranted in this instance. Air Jamaica, 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 \$105,000 in compromise of potential civil penalties. Of this total penalty amount, \$52,500 shall be due and payable in three equal installments, as directed in the ordering paragraphs below. The remaining \$52,500 shall be paid if Air Jamaica violates this order's cease and desist provisions during the 15 months following the service date of this order, in which case Air Jamaica may be subject to further enforcement action. This

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 Order 96-11-20 and Order 2003-9-5 also assessed Air Jamaica civil penalties of \$20,000 and \$50,000, respectively.

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 Jamaica, 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 Air Jamaica, Ltd., violated 14 CFR 399.84 by failing to include the fees in question in certain advertised fares, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Air Jamaica, Ltd. has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We find that by engaging in the conduct and violations described in paragraphs 2 and 3 above, Air Jamaica, Ltd., also violated the cease and desist provisions of Orders 96-11-20 and 2003-9-5;
5. Air Jamaica, Ltd., 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. Air Jamaica, Ltd., is assessed \$105,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4 above. Of this total penalty amount, \$52,500 shall be due and payable in three equal installments. The first payment is due and payable within 30 days after the date of issuance of this consent order, and two subsequent equal installments of \$17,500 are due and payable 90 days after and 150 days after the date of issuance of this consent order, respectively. The remaining \$52,500 shall be paid if Air Jamaica, Ltd. violates this order's cease and desist provisions during the 15 months following the service date of this order, in which case Air Jamaica, Ltd. may be subject to further enforcement action; 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 Air Jamaica, Ltd. 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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