



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

**Issued by the Department of Transportation  
On the 15<sup>th</sup> day of January, 2010**

**United Air Lines, Inc.**

**Docket OST 2010-0005**

**Violations of 49 U.S.C. § 41712, 14 CFR 399.84,  
and Order 2009-8-17**

**Served January 15, 2010**

**CONSENT ORDER**

This consent order concerns violations by United Air Lines, Inc., (UAL) of the full fare advertisement requirements specified in 14 CFR Part 399 and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. Further, UAL is subject to Order 2009-8-17,<sup>1</sup> in which it agreed to cease and desist from violations of Part 399. The instant order directs UAL to cease and desist from future violations of Part 399, section 41712, and Order 2009-8-17, and assesses the carrier a compromise civil penalty of \$30,000.

UAL, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84 of those rules, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. Under long-standing enforcement case precedent, the Department permits 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 in advertisements, so long as the charges are levied or approved 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 so that consumers can determine the full fare to be paid. Thus, the Federal excise tax (FET) of 7.5 percent, an *ad valorem* tax, must be included in initial fare quotes appearing on a company's website.

For approximately 60 hours on its Internet website, UAL failed to include the FET on the initial search results webpage in which air fares were displayed to consumers. After

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<sup>1</sup> *United Air Lines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2009-8-17 (August 25, 2009)*

being contacted by the Office of Aviation Enforcement and Proceedings (Enforcement Office), UAL quickly changed its website to comply with 14 CFR 399.84. By excluding the FET from fares at the first point in which those fares were viewable on its website to consumers, UAL violated section 399.84 and engaged in an unfair or deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

This is UAL's second recent violation of the Department's full fare advertisement regulations. In Order 2009-8-17, issued August 25, 2009, UAL was found to have violated 14 CFR 399.84 and 49 U.S.C. § 41712 by publishing air fare advertisements that failed to properly hyperlink the excluded taxes in a manner that clearly indicated the entire price to be paid by the consumer at the *first* point at which the fare was displayed and by publishing each-way air fares that were available only when bought for roundtrip travel without clear and conspicuous disclosure of the roundtrip purchase requirement in the advertisement. Order 2009-8-17 directed UAL to cease and desist from further violations of the full fare advertisement regulations and assessed UAL a civil penalty of \$75,000. Under the terms of that order, UAL was required to make an initial payment of \$37,500 and, if it violated the order within one year, to make an additional payment of \$37,500. UAL paid the additional \$37,500 on December 22, 2009.

In mitigation, UAL states that it is strongly committed to promoting its fares and services in a clear and readily comprehensible manner, and that it has cooperated fully with the Department in this matter. UAL further states that its failure to include the excise tax in the base fare display for this extremely brief period was wholly unintentional and the result of an inadvertent programming error. Furthermore, although the excise tax was inadvertently excluded from the base fare display, UAL points out that it was included in the total price quoted to passengers on all fare displays on its website, and as such consumers were ultimately able to clearly identify the total price to be paid for any fare at all times. Nevertheless, upon learning of the inadvertent programming error, UAL took immediate and extensive action to correct the matter.

The Enforcement Office has carefully considered the information provided by United Air Lines, Inc., but continues to believe that enforcement action is warranted. The Enforcement Office and United Air Lines, Inc., have reached a settlement of this matter in order to avoid litigation. In order to avoid litigation, and without admitting any violation, United Air Lines, Inc., consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712, Part 399 of the Department's regulations, and Order 2009-8-17 and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by United Air Lines, Inc., as well as by other air carriers and foreign air carriers.

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 United Air Lines, Inc., violated 14 CFR 399.84 by causing to be published air fare advertisements that excluded *ad valorem* taxes from the initial fare displays;
3. We find that by violating 14 CFR 399.84, United Air Lines, Inc., violated the cease and desist provisions of Order 2009-8-17;
4. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2 and 3, above, United Air Lines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order United Air Lines, Inc., and all other entities owned or controlled by or under common ownership with United Air Lines, Inc., and their successors and assignees, to cease and desist from violations of 49 U.S.C. § 41712, 14 CFR 399.84, and Order 2009-8-17;
6. We assess United Air Lines, Inc., a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above, which shall be due and payable within 15 days from the date of issuance of this order. Failure to pay the penalty as ordered shall subject United Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure to comply with this order; and
7. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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