



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

Issued by the Department of Transportation
On the 28th day of May, 2010

AirTran Airways, Inc.

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

Docket OST 2010-0005

Served May 28, 2010

CONSENT ORDER

This consent order concerns violations by AirTran Airways, Inc., (AirTran Airways) of the full fare advertising requirements specified in 14 CFR 399.84 and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. This order directs AirTran Airways to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$20,000.

As an air carrier, AirTran Airways is subject to the advertising requirements of Part 399 of the Department's rules. Section 399.84 of the Department's regulations requires that any advertising or solicitation for air transportation that states a price for such air transportation must state the entire price to be paid. Consequently, when advertising a fare, a carrier must have a reasonable number of seats available at that fare for the period during which the fare is being offered.¹ Failure to have a reasonable number of seats available at the advertised fare violates section 399.84 and constitutes an unfair and deceptive trade practice under 49 U.S.C. § 41712.

On February 16, 2010, AirTran Airways published a press release on its website advertising its "Leave the Blizzard Behind Sale." The sale lasted for 72 hours and applied for travel on AirTran Airways before May 26, 2010. The press release advertised fares "starting as low as \$39" one-way. However, an investigation revealed that there

¹ See, e.g., *American Trans Air, Inc.*, Order 97-12-1 (Issued December 1, 1997); *Continental Airlines, Inc.*, Order 93-10-49 (Issued October 29, 1993).

were no seats available for \$39 as part of the sale. In fact, the lowest available fare for the sale was \$44 which was the fare that was advertised on AirTran's website and in email communications sent out to its Net Escape subscribers. By advertising an airfare that was not available, AirTran Airways violated 14 CFR 399.84 and engaged in an unfair or deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, AirTran Airways states that the reference in the press release to a \$39 fare was the only place in which that fare was mentioned. AirTran Airways maintains that all other advertising material for the 72-hour sale correctly referenced the \$44 fare including the "landing page" on AirTran Airways website to which consumers were taken when they clicked on the sale reference on the main web page and in the 4,500,000 emails distributed at the time of the sale to AirTran Airways Net Escape subscribers customized by market. According to AirTran Airways there was no print media advertising of the sale and no reference to fare levels in radio advertising, and the reference to a \$39 fare in the press release resulted from an oversight by the drafter who used a template from a January 2010 fare sale that offered \$39 fares with the language in both press releases being otherwise almost identical. AirTran Airways states that it was not aware of the error until it was contacted by the Office of Aviation Enforcement and Proceedings (Enforcement Office) in early March 2010. AirTran Airways further states that it has received no consumer complaints with respect to the reference to a \$39 fare, but, in accordance with its standard policies, it would have honored the fare if it had been contacted by a consumer. AirTran Airways stated that it has put in place a new review process with respect to press releases mentioning fare sales that requires approval by two separate managers.

The Enforcement Office has carefully considered the information provided by AirTran Airways, but continues to believe that enforcement action is warranted. The Enforcement Office and AirTran Airways have reached a settlement of this matter in order to avoid litigation. AirTran Airways, without admitting any violation, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations, and to the assessment of \$20,000 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 AirTran Airways, 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 AirTran Airways, Inc., violated 14 CFR 399.84 by causing to be published air fare advertisements that listed an airfare that was not available for purchase by the public;
3. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, AirTran Airways, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order AirTran Airways, Inc., and all other entities owned or controlled by or under common ownership with AirTran Airways, Inc., and their successors and assignees, to cease and desist from violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. We assess AirTran Airways, Inc., a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$10,000 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$10,000 shall become due and payable if AirTran Airways, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and AirTran Airways, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject AirTran Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. 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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