



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

Issued by the Department of Transportation
On the Fourth day of August, 2011

Air Canada

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

Docket OST 2011-0003

Served August 4, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Air Canada that violate the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Air Canada to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

As a foreign air carrier, Air Canada is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisements where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, or 2) include only

general statements regarding the existence of such taxes and fees do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.¹

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of the fees that may be stated separately are shown. In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Facts and Conclusions

For a period of time in early 2011, Air Canada displayed advertisements on several websites that did not advise consumers of the amount of taxes and fees that must be paid in addition to the advertised fare or directly bring the consumer to the information on additional taxes and fees. Rather, once the consumer clicked on the advertisement, he or she was taken to a landing page on Air Canada's website where a list of routes and prices were displayed and consumers were not advised the details of the additional taxes and fees, stated in fine print, unless they scrolled to the bottom of the page. By failing to provide notice of the government imposed taxes and fees in any of the manners described above, Air Canada violated section 399.84, and applicable Department enforcement case precedent, and 49 U.S.C. § 41712.

Mitigation

In mitigation, Air Canada states that full compliance with Departments advertising rules is of the utmost importance to Air Canada, and it asserts that the deficiencies in the

¹ See, e.g., *US Airways, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-6-2 (June 2, 2011). *Delta Air Lines, Inc. Violations of 49 U.S.C. § 41712 and 14 CFR 399.84* Order 2010-5-30 (May 28, 2010). On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective January 24, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

² For example, under current policies, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

banner advertisements were completely unintentional. In response to the Department's concerns, Air Canada states that it promptly revised the banner ads and instructed its third party vendor to conduct a full review of its website and all U.S. marketing materials. Further, Air Canada asserts that it took additional steps to improve its advertising beyond what is required by the Department's rules. In this regard, Air Canada points out that it revised all of its banner ads by using larger font and underlining for the taxes and fees disclosure, moving the disclosure closer to the displayed fare, and creating a roll-over pop-up box directly attached to the banner advertisement that displays the taxes, fees, and terms and conditions. Air Canada states that it also conducted a review of its terms and conditions to ensure that the language was as clear as possible. Finally, Air Canada points out that it has fully cooperated with the Department in this matter and reaffirms its commitment to providing consumers with complete and accurate information in all of its advertisements

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Air Canada and continues to believe that enforcement action is warranted. The Enforcement Office and Air Canada have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Air Canada consents 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 the assessment of \$50,000 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 a strong deterrent against future noncompliance with the Department's advertising requirements.

This order is issued under the authority in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Air Canada violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Air Canada engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Air Canada, and all other entities owned or controlled by, or under common ownership and control with Air Canada, their successors, affiliates, and assigns, to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C.

§ 41712. Failure to comply with this cease and desist provision shall subject Air Canada, and their successors and assignees to further enforcement action;

5. We assess Air Canada \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$25,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$25,000 shall become due and payable immediately if Air Canada, violates this order's cease and desist provisions within one-year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order Air Canada to remit the payment ordered in paragraph 5 above by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Air Canada, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to additional 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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