



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

Issued by the Department of Transportation
On the Twenty-Sixth day of September, 2011

Virgin Atlantic Airways, Ltd.

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

Docket OST 2011-0003

Served September 26, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Virgin Atlantic Airways, Ltd., (Virgin Atlantic) 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 Virgin Atlantic to cease and desist from future violations of 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

As a foreign air carrier, Virgin Atlantic 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 Virgin Atlantic displayed advertisements on several websites that did not provide direct access to information on additional taxes and fees. Rather, once the consumer clicked on the advertised fare, he or she was taken to a landing page where sample routes and prices were displayed, as well as fine print, reached only after scrolling to the bottom of the page which explained the nature and amounts of additional taxes and fees. Virgin Atlantic's failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation, Virgin Atlantic states that it takes its obligation to comply with the Department's regulations very seriously and that any defects in its advertising were inadvertent and were caused by changes to the format of its website copy which caused a reader to have to scroll down to review the terms and conditions applicable to the advertised fare. Virgin notes that the format of the ads varied by the scope and nature of

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>.

the markets being promoted. Upon notice of the Department's concerns, Virgin Atlantic immediately removed all online advertising until revisions were made, and revised both its banner ads and its landing page before placing the ads back online. Virgin Atlantic addressed the Department's concerns by adding a hyperlink to the banner ads' fee disclosure that leads directly to the terms and conditions, and revised its landing page to prominently display the round trip disclosure. On its own initiative, Virgin Atlantic states that it took added steps to make the banner ad disclosure more prominent and completely revised and reformatted its terms and conditions, making it easier for the consumer to follow. Virgin Atlantic notes that it has fully cooperated with the Department in this matter and further states that it continues to pride itself on its reputation for customer care, as well as its compliance disposition.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Virgin Atlantic and continues to believe that enforcement action is warranted. The Enforcement Office and Virgin Atlantic have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Virgin Atlantic 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 Virgin Atlantic Airways, Ltd., 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, Virgin Atlantic Airways, Ltd., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Virgin Atlantic Airways, Ltd., and all other entities owned or controlled by, or under common ownership and control with Virgin Atlantic Airways, Ltd., 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 Virgin Atlantic Airways, Ltd., and its successors and assignees to further enforcement action;

5. We assess Virgin Atlantic Airways, Ltd., \$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 Virgin Atlantic Airways, Ltd., violates this order's cease and desist provisions within one-year; and
6. We order Virgin Atlantic Airways, Ltd., to remit the payment assessed in ordering 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 Virgin Atlantic Airways, Ltd., 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

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