



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

Issued by the Department of Transportation
On the Twenty-First day of November, 2011

Spirit Airlines, Inc.

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

Docket OST 2011-0003

Served November 21, 2011

CONSENT ORDER

This consent order concerns print and Twitter advertisements by Spirit Airlines, Inc., (Spirit) that violated the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. This order directs Spirit 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 an air carrier, Spirit is subject to the advertising requirements of Part 399 of the Department's rules. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their travel plans, 14 CFR 399.84 requires that advertisements specifying airfares 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 the base fare 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 advertisement where a fare is presented.¹ Thus, for example, fare advertisements that fail to

¹ 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

identify the existence and amount of separate additional taxes or fees or include only general statements regarding the existence of such taxes or 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.

In print advertisements on billboards and posters, 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 such a way that passing consumers can read them.² In Internet advertising displays, such taxes and fees may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra. The link must directly take 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.³

In addition, the Department has allowed carriers to advertise each-way fares that are available only when bought for roundtrip travel, so long as the disclosure of the roundtrip purchase requirement in the advertisement is clear and conspicuous, i.e., prominent and proximate to the advertised fares. The Department has concluded that advertisements that fail to properly disclose a roundtrip purchase requirement do not comply with section 399.84 and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.⁴

Facts and Conclusions

For a short period of time in June 2011, Spirit ran a billboard and poster campaign to promote a new service. On a truck-borne billboard, an asterisk appeared next to the advertised fare for the new service alerting the viewer to the small print at the bottom of the ad which stated, "Additional taxes, fees, terms and conditions apply." This general statement, while acknowledging the existence of taxes and fees, violated the Department's full-fare advertising rule and case precedent because it failed to disclose the amount of those taxes and fees. In the

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 See *Continental Airlines, Inc., Violations of 14 CFR 399.84*, Order 88-8-3 (August 1, 1988), regarding full-fare advertising violations on billboards and posters.

³ 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 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>

⁴ See, e.g., *United Air Lines Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-8-17; *Continental Airlines Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-8-3; *Martinair Holland, N.V., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 1999-6-16; Letter from Office of Aviation Enforcement and Proceedings to U.S. and Foreign Air Carriers, March 9, 1995, available at: <http://airconsumer.ost.dot.gov/rules/19950309.htm>.

poster campaign, hand-held signs advertised fares with an asterisk next to each fare. However, the signs did not include any language disclosing either the existence or amount of additional taxes and fees that applied to the fares. Thus, the advertisements on the posters violated section 399.84 and 49 U.S.C. § 41712.

A review of Spirit's Twitter feed disclosed additional instances where Spirit failed to comply with the Department's full-fare advertising rule and case precedent. For example, Spirit's Twitter feed included the following specific Twitter listing ("or tweet"): "Check out our [fares] ~ from just \$9* each way!" A consumer who clicked on the link proximate to this tweet was taken to a landing page on Spirit's website where Spirit disclosed for the first time that these fares did not include all taxes and fees, and were subject to a roundtrip purchase requirement. Further, only after clicking on a second link, which took readers to the bottom of the landing page, was the amount of additional taxes and fees disclosed. Because the roundtrip purchase requirement and the existence and amount of taxes and fees were not disclosed on the specific tweets themselves, nor via any of the other permissible means as described above, Spirit violated section 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation, Spirit states that it is committed to complying in full with the Department's policies and rules with respect to full fare advertising. Spirit asserts that its omissions in this case were inadvertent. The carrier states that the mobile billboard and poster campaign lasted for less than two days, and was only at a few locations in Los Angeles. Although the statement about the amount of the taxes and fees was inadvertently left off the printed materials, the posters were held by individuals who Spirit states were trained to answer questions about the new service including information on all taxes and fees. Spirit asserts that it did not receive any complaints about the billboards/signs or the disclosures regarding additional taxes and fees. With respect to the Twitter advertisements, Spirit states that it discloses the roundtrip purchase requirement and the existence of additional taxes and fees on its Twitter homepage, which it believed at the time satisfied the applicable requirements and ran Twitter feed similar to other carriers. The Twitter sale appeared for less than two days and went to a limited group of individuals who specifically signed up to receive Spirit's Twitter feed. As soon as Spirit learned of the Department's concern, it discontinued advertising specific fares on Twitter.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Spirit and continues to believe that enforcement action is warranted. The Enforcement Office and Spirit have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Spirit consents to the issuance of this order to cease and desist from future violation 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 Spirit Airlines, Inc., violated 14 CFR 399.84 by advertising fares that did not state the full price to be paid for the air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2., Spirit Airlines, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Spirit Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Spirit, its successors and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. Spirit Airlines, Inc., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3. Of this total penalty amount, \$25,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$25,000 shall become due and payable if Spirit Airlines, Inc., violates this order's cease and desist or payment provisions within 12 months of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall be due and payable immediately, and Spirit may be subject to additional enforcement action for failure to comply with this order; and
6. 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 compromise penalty assessment as ordered shall subject Spirit, to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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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Deputy General Counsel

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