



**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 January, 2012

AirTran Airways, Inc.

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

Docket OST 2012-0002

Served January 4, 2012

CONSENT ORDER

This consent order concerns Internet advertisements by AirTran Airways, Inc., (AirTran) 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 AirTran to cease and desist from future violations of 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$60,000.

Applicable Law

As an air carrier, AirTran 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 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 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 the fall of 2011 AirTran displayed an advertisement on various third-party websites stating "Select destination on SALE Starting at \$59 one way." The advertisement contained two asterisks, one following the fare and the other below the fare next to a statement reading, without further elaboration, "Additional taxes, fees, exclusions apply." Nowhere in the advertisement were the nature and amount of the additional taxes stated. Rather, once the consumer clicked on the advertisement, he or she was taken to a landing page on AirTran's website, where a list of routes and prices were displayed and consumers were not advised of the details of the additional taxes and fees, stated in fine print, unless they scrolled to the bottom of the page. AirTran'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, AirTran states that it places very high importance on compliance with all Department regulations and guidance. AirTran states that it published the advertisement at issue in this consent order in good faith believing it to be in substantial compliance with Department guidance, and the advertisement did not generate any consumer

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 26, 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>.

complaints. However, upon notification of possible non-compliance, AirTran points out that it took immediate action to ensure all its banner advertisements displayed tax and fee information in a fully compliant manner. Due to an unintentional oversight, AirTran asserts that the advertisement in question was not properly vetted before publication. AirTran states that Southwest, which recently purchased the carrier now reviews all AirTran advertising and subjects it to the same stringent compliance standards that apply to Southwest's own advertising.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by AirTran and continues to believe that enforcement action is warranted. The Enforcement Office and AirTran have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, AirTran 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 \$60,000 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 by AirTran and other sellers of air transportation.

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 AirTran Airways, Inc., 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, AirTran Airways, Inc., engaged in unfair and deceptive practices and unfair methods 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 and control with AirTran Airways, Inc., its successors, affiliates, and assignees, 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 AirTran Airways, Inc., and its successors and assignees to possible further enforcement action;

5. We assess AirTran Airways, Inc., \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$30,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$30,000 shall become due and payable immediately if AirTran Airways, Inc., 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 AirTran Airways, Inc., 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 AirTran Airways, Inc., 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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