



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

**Issued by the Department of Transportation
On the First day of November, 2012**

Société Air France

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

Docket OST 2012-0002

Served November 1, 2012

CONSENT ORDER

This consent order concerns Internet advertisements by Société Air France (Air France) that violate the Department's full fare advertising regulation, 14 CFR 399.84(a), by (1) failing to properly disclose applicable taxes and fees charged to consumers booking frequent flyer award tickets; and (2) failing to clearly distinguish between taxes and government-imposed fees and carrier-imposed fuel surcharges once such taxes and fees were disclosed. These violations constitute violations under 49 U.S.C. § 41712(a), which prohibits unfair and deceptive practices. This order directs Air France to cease and desist from future similar violations of section 399.84(a) and section 41712, and assesses the carrier a compromise civil penalty of \$85,000.

Applicable Law

As a foreign air carrier, Air France is subject to the advertising requirements of Part 399 of the Department's rules and the prohibition in 49 U.S.C. § 41712 against engaging in unfair and deceptive practices and unfair methods of competition. On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, required airlines to comply with the Department's full-fare advertising rule as written. The full-fare rule mandates that the price advertised for passenger air transportation include all taxes and government-imposed fees and all

mandatory airline- and ticket agent-imposed fees.¹ This provision was codified in 14 CFR 399.84(a), which became effective on January 26, 2012.

Although an advertised price must now include all mandatory taxes and fees, air carriers are still free in addition to provide consumers with a description of taxes, government-imposed fees, and carrier-imposed fees.² However, these descriptions may not be false or misleading, may not be displayed as prominently as the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. On February 21, 2012, the Office of Aviation Enforcement and Proceedings (Enforcement Office) issued guidance regarding the display of taxes and fees on an Internet website that advertises air transportation. The Enforcement Office found that in the description of taxes and fees allowed under section 399.84(a), some sellers of air transportation were including carrier- or agent-imposed fees under a description of “government” taxes. The Enforcement Office noted that descriptions of taxes, fees, and surcharges must be accurate in all respects, including correctly identifying the entity to which they are attributable. The Enforcement Office gave carriers and agents sixty days, until April 21, 2012, to change their descriptions of taxes and fees to comport with this guidance. Violations of section 399.84(a) constitute unfair and deceptive practices in violation of section 41712.

Facts and Conclusions

In response to a consumer complaint, the Enforcement Office investigated the disclosure of taxes and fees on Air France’s United States-focused “Flying Blue” website, which is dedicated to the purchase and redemption of frequent-flyer award tickets. On this website, a member of Air France’s loyalty program, “Flying Blue,” searches for a flight in a manner similar to a search on Air France’s primary website by entering basic flight search criteria, such as origin city, destination city, and dates of flight. In response, Air France provides a matrix of mileage amounts needed to redeem a ticket instead of a monetary fare amount. However, at all times relevant to this matter, Air France did not provide the monetary amounts of taxes and fees that consumers were required to pay in conjunction with the miles in order to purchase a ticket in the initial mileage matrix. Instead, at the bottom of the matrix page, Air France inserted a disclaimer noting, without further elaboration or direction, that taxes and fees were extra. The failure to identify any amount of taxes and fees on the first page matrix was particularly troubling because, in conjunction with mileage ticket redemption, Air France imposes a fuel surcharge that can

¹ Under the prior enforcement policy, the Department allowed taxes and government-imposed 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 were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately determine the full fare to be paid. The separate listing of carrier-imposed surcharges was never allowed.

² Such descriptions, if accurate, serve the public interest by allowing consumers to discern the portion of their total cost that is attributable to government sources.

sometimes be several hundred dollars.³ Failure to disclose the monetary amount of applicable taxes and carrier-imposed fees on the first page of results after a frequent-flyer award flight search initiated by a consumer is a violation of section 399.84(a) and an unfair and deceptive practice under 49 U.S.C. § 41712(a).

Furthermore, the Enforcement Office found that after consumers selected flights from the search itinerary results page, they were taken to a summary page, where, in fine print at the bottom, Air France's fuel surcharge was included under the rubric "taxes," while a separate rubric, "surcharge," listed the amount of carrier-imposed charges as being zero. This method of describing the fuel surcharge continued after the deadline to alter taxes and fees descriptions set by the Enforcement Office in its February 21, 2012, guidance. Failure to accurately describe carrier-imposed surcharges and leading consumers to believe a carrier-imposed charge is a tax is a violation of section 399.84(a) and an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712(a).

Mitigation

In mitigation, Air France emphasizes that it takes very seriously its responsibilities and obligations to comply with the Department's consumer protection rules and regulations. Air France states that its general U.S.-facing website was in full compliance with the Department's full fare advertising rule even before the new rule became effective on January 26, 2012. Air France further notes that the alleged violations did not involve Air France's general website, but rather related solely to the separate Flying Blue travel rewards website, which has a much smaller universe of users. Air France asserts that it was aware of only two complaints relating to travel award fee disclosures. Air France states that it undertook substantial and immediate efforts to bring the U.S.-facing Flying Blue website into compliance, but that it faced difficulties and complexities in resolving the technology issue because the basic architecture of the website had to be modified to accomplish the necessary revisions. These modifications, according to Air France, required changes to the website's complicated hard-code protocol, requiring reliance on a different technical team than was used for revisions to Air France's general website, as well as coordination with different teams in the U.S. and France. Air France states that the process was unexpectedly time-consuming. To further underscore its compliance attitude, Air France states that it shut down the U.S.-facing award booking function for a period of time until technological modifications were finalized.

Decision

The Enforcement Office has carefully considered the information provided by Société Air France but continues to believe that enforcement action is warranted. The

³ Although not addressed in this order, 14 CFR 399.84(a) requires that any "fuel surcharge" accurately reflect the added cost of fuel per passenger over some baseline for the travel in question. *See Additional Guidance on Airfare/Air Tour Price Advertisements*, issued on February 21, 2012, available at <http://airconsumer.dot.gov/rules/guidance.htm>.

Department views compliance with 14 CFR 399.84(a) seriously. The Enforcement Office and Société Air France have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Société Air France, accepts the findings and conclusions stated herein, and consents to the issuance of this order to cease and desist from future violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712 and to the assessment of \$85,000 in compromise of potential civil penalties otherwise assessable 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 to future noncompliance with the Department's advertising requirements by Société Air France, as well as by other foreign air carriers and sellers of air transportation.

This order is issued under the authority contained in 49 CFR Part 1.

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 Société Air France violated 14 CFR 399.84(a) by failing to properly disclose the full price of frequent-flyer award tickets;
3. We find that Société Air France violated 14 CFR 399.84(a) by describing a carrier-imposed surcharge as a "tax" when it was not a tax;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Société Air France engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order Société Air France and all other entities owned or controlled by or under common ownership with Société Air France and their successors and assignees to cease and desist from violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712;
6. We assess Société Air France a compromise civil penalty of \$85,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4, above. Of this total penalty amount, \$42,500 shall be due and payable as follows: \$14,167 shall be due and payable within sixty (60) days from the date of issuance of this order, \$14,167 shall be due and payable within 120 days from the date of issuance of this order, and \$14,166 shall be due and payable within 180 days from the date of issuance of this order. The remaining \$42,500 shall become due and payable immediately if Société Air France violates this order's cease and desist provision within one-year following the date of issuance of this order, or fails to comply with the order's payment provisions; and

7. We order Société Air France to pay the penalty assessed in paragraph 6 through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Société Air France to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at
www.regulations.gov