



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

Issued by the Department of Transportation
On the Twenty-Second day of June, 2012

**Concesionaria Vuela Compania de Aviacion,
S.A.P.I. de C.V.**

**Violations of 14 CFR 399.85(b)
and 49 U.S.C. § 41712**

Docket OST 2012-0002

Served June 22, 2012

CONSENT ORDER

This order concerns violations by Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., (Volaris) of 14 CFR 399.85(b) and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Volaris to cease and desist from future similar violations and assesses the carrier \$130,000 in civil penalties.

Applicable Law

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 clearly and prominently disclose on the first screen in which the carrier offers a fare quotation for a specific itinerary selected by a consumer that additional fees for baggage may apply and where consumers can view the applicable baggage fees. 14 CFR 399.85(b). This rule ensures that consumers are not deceived and are given accurate and complete information on which to base their travel purchase decisions. Violations of section 399.85(b) constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Facts

As a foreign air carrier, Volaris is subject to the prohibition on engaging in unfair and deceptive practices set forth in 49 U.S.C. § 41712 and to the baggage fee disclosure requirements of 14 CFR 399.85(b). Volaris failed to meet the requirements of section 399.85(b) by advertising fares on its website without providing a link to potentially applicable baggage fees on the first screen on which a fare quotation appeared. For a period of time beginning January 24, 2012, the effective date of this provision, in response to consumer searches using the main booking path on its website, Volaris displayed a fare matrix that separately listed the fares, including taxes and fees, for outbound and inbound legs. On this screen, however, Volaris failed to inform consumers that additional baggage fees may apply, thereby violating 14 CFR 399.85(b), as well as 49 U.S.C. § 41712.

Mitigation

In mitigation, Volaris states that its failure to include the required statement concerning baggage fees was inadvertent. Volaris further states that it encountered difficulties with its automation vendor in making the necessary changes to its website but has now brought itself into compliance.

Volaris states that complete information concerning Volaris' free baggage allowances was available on the search results page of the carrier's website both before and after January 24, 2012, in a pop-up positioned immediately adjacent to the fare quotation itself. Complete information regarding its excess baggage charges was also available on its website. According to the carrier, only a very small percentage of Volaris' passengers paid excess baggage charges during the first quarter of 2012 because visitors to the website were given sufficient information to stay within the limits and because they were offered the option of purchasing expanded baggage allowances at rates that are lower per pound than Volaris' normal excess baggage rates. Volaris also states that during the first quarter of 2012 its website received relatively limited usage.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., but continues to believe enforcement action is warranted. The Enforcement Office and Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., consents to the issuance of this order to cease and desist from future violations of 14 CFR 399.85(b) and 49 U.S.C. § 41712 and to the assessment of \$130,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent

to future similar unlawful practices by Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., and other carriers.

This order is issued under the authority contained 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 Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., violated 14 CFR 399.85(b) by failing to clearly and prominently disclose on the first screen in which the carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can view the applicable fees;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., and all other entities owned or controlled by, or under common ownership and control with Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 399.85(b) and 49 U.S.C. § 41712;
5. Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., is assessed \$130,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$65,000 shall be due and payable within thirty (30) days of the date of the issuance of this order. The remaining portion of the civil penalty amount, \$65,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., may be subject to additional enforcement action for violation of 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 will subject Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V., to an assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible 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:

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Deputy General Counsel

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