



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

Issued by the Department of Transportation  
On the Second day of August, 2012

**Philippine Airlines, Inc.**

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

**Docket OST 2012-0002**

**Served August 2, 2012**

**CONSENT ORDER**

This order concerns violations by Philippine Airlines, Inc. (Philippine Airlines) of 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Philippine Airlines to cease and desist from future similar violations and assesses the carrier \$80,000 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 comply with the Department's full-fare advertising rule as written, which requires that the prices advertised include all government-imposed taxes and fees and all airline- and ticket agent-imposed fees.<sup>1</sup>

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<sup>1</sup> 76 Fed. Reg. 23110 (April 25, 2011).

The Department delayed the effective date from October 24, 2011, to January 24, 2012, for the requirements pertaining to full-fare advertising,<sup>2</sup> and later extended the time period for compliance again to January 26, 2012.<sup>3</sup>

The Department's current full-fare advertising rule, 14 CFR 399.84(a), requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid by the consumer. This rule ensures that consumers are not deceived and are given accurate and complete fare information on which to base their travel purchase decisions. Although charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be displayed as prominently as the full fare, may not be presented in the same or larger font 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. Violations of section 399.84 constitute unfair and deceptive practices in violation of section 41712.

### **Facts**

As a foreign air carrier, Philippine Airlines is subject to the prohibition on engaging in unfair and deceptive practices set forth in 49 U.S.C. § 41712 and to the advertising requirements of 14 CFR 399.84(a). Philippine Airlines failed to meet the requirements of section 399.84(a) by advertising fares that did not include taxes and fees on its website. For a period of time after January 26, 2012, in response to consumer searches using the main booking path on its website, Philippine Airlines displayed a fare matrix that separately listed the base fares for outbound and inbound legs. These base fares, however, did not include the amount of additional government taxes and fees. Although the total fare to be charged, including taxes and fees, was ultimately disclosed at the bottom of the page, by failing to advertise fares as the entire price to be paid by the consumer when it first was stated, Philippine Airlines violated 14 CFR 399.84(a) as well as 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Philippine Airlines maintains that it takes its obligations under the Department's full-fare advertising rule very seriously. According to Philippine Airlines, its actions were inadvertent and unintentional and that in good faith, it believed that it was compliant with the applicable regulations. Philippine Airlines also asserts that it never received any consumer complaint with respect to the fare advertising in question.

Philippine Airlines states that it has acted expeditiously to address the Department's concerns regarding the display of fares on its website. Philippine Airlines points out that when the Department advised the carrier of concerns with the pricing information on the

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<sup>2</sup> 76 Fed. Reg. 45184 (July 28, 2011).

<sup>3</sup> 76 Fed. Reg. 82115 (Dec. 30, 2011).

carrier's website, it immediately contacted its third-party vendor on which it had relied to develop the relevant booking engine displays. Philippine Airlines states that although it directed that third-party vendor to modify the displays, it encountered difficulties in making the necessary changes to its website since the vendor was unable to deliver the requested modification within the promised delivery dates. Philippine Airlines states that it has cooperated completely and promptly with the Department in amicably resolving this matter and has also taken steps internally by instituting checks and balances in its controls so as to better monitor and oversee its advertising practices and, therefore, better ensure Philippine Airlines' adherence to the Department's directives, policies and regulations at all times.

Philippine Airlines further asserts that even though it was in the midst of migrating to a new system for the display of its website fares, it did not hesitate to spend a significant amount of money to make the site's fare display under the old system compliant with the Department's requirements, and Philippine Airlines expects to incur additional costs to ensure future compliance. Additionally, Philippine Airlines believed that as of January 24, 2012, it was fully compliant with the full-fare advertising requirement based on its good faith interpretation of section 399.84(a) and that its website fare display had been modified in accordance with what it believed is required under the Department's rules.

Finally, Philippine Airlines asserts that it has agreed to settle this matter without admitting to violations to avoid the burden and expense of litigation.

### **Decision**

The Enforcement Office has carefully considered the information provided by Philippine Airlines, but continues to believe enforcement action is warranted. The Enforcement Office and Philippine Airlines have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Philippine Airlines, 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 \$80,000 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 Philippine Airlines 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 Philippine Airlines, Inc., violated 14 CFR 399.84(a) by failing to state the entire price to be paid in the advertisement of airfares on its website;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Philippine Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Philippine Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Philippine Airlines, Inc., its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 399.84(a), and 49 U.S.C. § 41712;
5. Philippine Airlines, Inc., is assessed \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$40,000 shall be due and payable in five equal installments of \$8,000 each, with the first installment due and payable on or before August 20, 2012, the second installment due and payable on or before September 20, 2012, the third installment due and payable on or before October 20, 2012, the fourth installment due and payable on or before November 20, 2012, and the last installment due and payable on or before December 20, 2012. The remaining \$40,000 shall become due and payable if, within one year of the issuance date of this order, Philippine Airlines, Inc., violates the cease and desist provision in ordering paragraph 4, above, or fails to comply with the payment provisions in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately; and
6. We order Philippine Airlines, Inc., to pay the penalty 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 Philippine Airlines, Inc., 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**

**(SEAL)**

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