



**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

Santa Barbara Airlines

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

Docket OST 2012-0002

Served August 2, 2012

CONSENT ORDER

This order concerns violations by Santa Barbara Airlines (Santa Barbara) of 14 CFR 399.85(b) and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Santa Barbara 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 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, which entered into effect on January 24, 2012, 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, Santa Barbara 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). For a period of time beginning January 24, 2012, the effective date of this provision, Santa Barbara failed to meet the requirements of section 399.85(b) by failing to disclose on the first screen in which it offers a fare quotation for a specific itinerary that additional airline fees for baggage may apply and where consumers can see those fees. By violating section 399.85(b), Santa Barbara also violated 49 U.S.C. § 41712.

Mitigation

Santa Barbara states that it takes its obligations to comply with the Department's rules very seriously. Santa Barbara further states that it strives to ensure its website is compliant with all Department regulations. Santa Barbara points out that its website is in Spanish because the vast majority of SBA's passengers speak and read only Spanish.

Santa Barbara states that upon the regulations' issuance it assessed what would be necessary to comply with the Department's Enhancing Airline Passenger Protections rule, conferred with its IT personnel, and went to great expense to implement the changes on the website. Santa Barbara further states it encountered difficulties due to the lack of infrastructure sophistication in Venezuela, e.g. frequent blackouts and power outages – typically as many as 50 per day. The frequent and extensive daytime power outages substantially impeded Santa Barbara's efforts to timely make changes to its website.

Although Santa Barbara's website may not have been technically fully compliant with the Department's regulation in that the required notice was not within the booking engine, the carrier states that a listing of its baggage policies and fees was, and continues to be, easily accessible from the homepage under "Volando Con SBA." Santa Barbara further states that there was no intent on the part of SBA to deceive or mislead customers and that there have been no consumer complaints regarding its baggage policies.

Decision

The Enforcement Office has carefully considered the information provided by Santa Barbara, but continues to believe enforcement action is warranted. The Enforcement Office and Santa Barbara have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Santa Barbara 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 \$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 Santa Barbara 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 Santa Barbara Airlines 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, Santa Barbara Airlines engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Santa Barbara Airlines and all other entities owned or controlled by, or under common ownership and control with Santa Barbara Airlines, 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. Santa Barbara Airlines 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 within ninety (90) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$40,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Santa Barbara Airlines violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Santa Barbara Airlines may be subject to additional enforcement action for violation of this order; and
6. We order Santa Barbara Airlines to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject Santa Barbara Airlines 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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Assistant General Counsel for
Aviation Enforcement and Proceedings

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