



**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 May, 2013

**AirTran Airways, Inc.**

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

**Docket OST 2013-0004  
Served May 22, 2013**

**CONSENT ORDER**

This order concerns violations by AirTran Airways, Inc., (AirTran) of the full fare advertising rule, 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs AirTran to cease and desist from future similar violations and assesses the carrier \$100,000 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. The full-fare rule mandates that the price advertised for passenger air transportation include all government-imposed taxes and fees and all mandatory airline- and ticket agent-imposed fees. This provision was codified in 14 CFR 399.84(a), which took effect on January 26, 2012. 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 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 14 CFR 399.84(a) constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

In July 2011, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted forums on the new consumer rules, providing guidance to carriers and agents on compliance. One topic discussed in depth at the forum and then later addressed in the Enforcement Office's Frequently Asked Questions guidance document published on September 6, 2011, and updated on October 19, 2011, January 11, 2012, and June 15, 2012, as well as in a Notice published on May 17, 2012, was how a carrier should display the "fare" for an award ticket under a frequent flyer program. The Enforcement Office advised carriers that, in the case of an award ticket, the full fare required to be stated must be the total amount of miles (or credits) a consumer needs to redeem for an award ticket plus any monetary amount the consumer must pay in order to obtain the award ticket. Therefore, the mileage (or credits) amount and the cash amount must be in equal prominence in the display, as they are both components of the full fare. The monetary amount must include any mandatory charge that the carrier imposes in order to redeem the award amount, including service/processing charges and fuel surcharges as well as taxes and fees.

### **Facts**

From September 2012 through December 2012, AirTran conducted an advertising campaign to promote its A+ Rewards Visa by offering, for domestic air transportation, "2 Roundtrip Flights after you spend \$2,000 in the first 3 months of opening your account." The advertisements were sent by e-mail to AirTran customers, were placed online at [www.airtran.com](http://www.airtran.com), and were located on signs at Atlanta Hartsfield-Jackson International Airport, Baltimore-Washington International Thurgood Marshall Airport, and Orlando International Airport. In total, 8,534 consumers applied for the A+ Rewards Visa in response to this advertising campaign.

The advertisements used in this campaign failed to note that consumers would have to pay certain government fees to redeem the "2 Roundtrip Flights" after satisfying the minimum spending amount. Specifically, consumers were not informed that the credits could be redeemed for air travel only if the consumer paid the September 11<sup>th</sup> Security Fee starting at \$5.00 per roundtrip. This mandatory government fee was not disclosed anywhere in the advertisements, including in its footnotes.

By not disclosing the government fees applicable to the "2 Roundtrip Flights" offered to A+ Rewards Visa cardholders, AirTran failed to state the entire price to be paid by the consumer to the air carrier as required by 14 CFR 399.84(a). By violating section 399.84(a), AirTran also committed an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

### **Mitigation**

AirTran states that as soon as it became aware that certain A+ Rewards Visa advertisements were not fully compliant with the Department's rules, the company acted quickly to either remove or correct the materials at issue within a matter of days. While AirTran concedes that the omission of the government fee is a violation, it notes that the amount of the fee is very small compared to the value of the roundtrip ticket, which could be worth hundreds of dollars. AirTran also states that it did not impose any carrier charges for the redemption of these award tickets. Finally, AirTran states that it has taken appropriate steps, including implementing a more robust review process, to ensure that all future advertisements properly disclose the minimum mandatory government taxes and fees applicable to award tickets.

### **Decision**

The Department takes compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by AirTran but 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. AirTran consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a) and to the assessment of \$100,000 in compromise of potential 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 to future noncompliance with the Department's consumer protection requirements.

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 AirTran Airways, Inc., violated 14 CFR 399.84(a) by quoting a price for air transportation without stating the entire price to be paid by the consumer to the air carrier;
3. By engaging in the conduct described in ordering paragraph 2, above, AirTran Airways, Inc., engaged in an unfair and deceptive practice and an unfair method 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., and its successors, affiliates, and assignees, to cease and desist from future

violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a). Failure to comply with this cease and desist provision shall subject AirTran Airways, Inc., and its successors, affiliates, and assignees to further enforcement action;

5. AirTran Airways, Inc., is assessed \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$50,000 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, \$50,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Air Tran Airways, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Air Tran Airways, Inc., may be subject to additional enforcement action for violation of this order; and
6. We order AirTran Airways, 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 compromise penalty assessment as ordered shall subject AirTran Airways, Inc., 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 ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

**BY:**

SAMUEL PODBERESKY

Assistant General Counsel for  
Aviation Enforcement and  
Proceedings

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