



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

Issued by the Department of Transportation
on the 17th day of October, 2014

Cathay Pacific Airways Limited

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

Docket OST 2014-0001

Served October 17, 2014

CONSENT ORDER

This order concerns violations by Cathay Pacific Airways Limited (Cathay Pacific) 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 Cathay Pacific to cease and desist from future similar violations and assesses the carrier \$260,000 in civil penalties.

Applicable Law

As a foreign air carrier, Cathay Pacific is subject to the advertising requirements of 14 CFR 399.84(a). On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers which, among other things, require airlines to comply with the Department's full-fare advertising rule as written. The full-fare rule requires that the price advertised for passenger air transportation includes all government-imposed fees and taxes and all mandatory airline and ticket-agent imposed fees.¹ Violations of section 399.84 constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

¹ This provision was codified in 14 CFR 399.84(a), which took effect on January 26, 2012.

The Department's full-fare advertising regulation covers websites selling air transportation marketed to U.S. consumers. More specifically, the rule applies to advertisements of foreign carriers, among others, that are marketed to U.S. consumers for air transportation within, to, or from the United States.² The Office of Aviation Enforcement and Proceedings (Enforcement Office) has issued detailed guidance regarding the applicability of the full-fare rule. To determine whether a particular advertisement or website is marketed to U.S. consumers, the Enforcement Office looks to various factors, including whether the seller has an option on its website that differentiates sites or pages designed for U.S. or other consumers.³

Facts

In response to a consumer complaint, the Enforcement Office investigated the fare advertising on Cathay Pacific's U.S. customer-facing website.⁴ The Enforcement Office found that in May 2014, Cathay Pacific advertised fares in its initial fare matrix that did not include mandatory taxes and fees. Specifically, when consumers searched for fares from non-U.S. points to the United States, the Cathay Pacific website first displayed a fare matrix that did not include carrier surcharges and government imposed fees and taxes. After choosing a flight and proceeding through the booking process, consumers were presented with much higher fares for the same flight. Cathay Pacific admitted to the Enforcement Office that such flights did not include mandatory fees and taxes for a significant period of time because Cathay Pacific did not believe that the full-fare rule applied to fares on flights originating outside the United States. By not advertising the full-fare to be paid by the consumer in the initial fare matrix on its U.S. website, Cathay Pacific violated 14 CFR 399.84(a) and engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Cathay Pacific states that, for travel originating in the United States, Cathay Pacific's website has, for all relevant periods, displayed the full fare at the outset, including taxes, fees, and carrier surcharges.

² *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, Section IX, Questions 1 and 4, (Last updated on June 15, 2012), available at <https://www.dot.gov/airconsumer/aviation-rules>.

³ Those factors include but are not limited to whether the fares are displayed in U.S. dollars, whether sales can be made to persons with addresses or telephone numbers in the United States, whether the website is in English, whether the seller uses banner advertisements or highlights special deals for flights to or from the United States, and whether the seller has an option on its website that differentiates sites or pages designed for U.S. or other consumers. See *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, Section IX, Questions 1 and 4, (Last updated on June 15, 2012), available at <https://www.dot.gov/airconsumer/aviation-rules>.

⁴ Cathay Pacific's website has several language/region options and to search airfares on the Cathay Pacific website, a consumer must first select the "Country/Region" option the consumer wishes to use. The version of the website at issue here is identified as the "United States" option.

Cathay Pacific further states that with respect to fares originating outside the United States, including roundtrip travel originating and terminating outside the United States, it reasonably believed that those fares were not marketed to U.S. consumers. Cathay Pacific states that it interpreted the Department's rules and guidance to mean that if a consumer accesses Cathay Pacific's U.S. website and books a fare for a trip originating outside the United States, such as a roundtrip fare that originates and terminates outside the United States, then that passenger was not considered a "U.S. consumer" for marketing purposes. Moreover, Cathay Pacific points out that its U.S. website displayed fares originating outside the United States in the currency of the country in which the fare originated and that Cathay Pacific's website and the servers used to operate its website are located in Hong Kong.

Cathay Pacific states that notwithstanding its previous understanding as to the geographic reach of the full-fare advertising rule, it fully cooperated with the Department and promptly implemented remedial measures to avoid any appearance that it violated section 399.84(a). Cathay Pacific states that its U.S. website now fully complies with the full-fare advertising rule. Moreover, the carrier states that it has never received a complaint that its U.S. website violated the full-fare advertising rule, and until now, it has never been subject to a civil penalty through an enforcement action brought by the Department.

Decision

The Enforcement Office has carefully considered the information provided by Cathay Pacific, but continues to believe enforcement action is warranted. In order to avoid litigation, Cathay Pacific has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Cathay Pacific to cease and desist from future similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712, and assessing \$260,000 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 as a deterrent to Cathay Pacific and other carriers.

This order is issued under the authority contained in 14 CFR Part 1.

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 Cathay Pacific Airways Limited violated 14 CFR 399.84(a) by failing to include mandatory taxes and fees in the initial fare matrix on its U.S. website;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Cathay Pacific Airways Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

4. We order Cathay Pacific Airways Limited, its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with Cathay Pacific Airways Limited, its successors, its affiliates, and its assigns to cease and desist from further similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712;
5. We assess Cathay Pacific Airways Limited \$260,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$130,000 shall be due and payable within thirty (30) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$130,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Cathay Pacific Airways Limited violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Cathay Pacific Airways Limited may be subject to additional enforcement action for violation of this order; and
6. We order Cathay Pacific Airways Limited 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 Cathay Pacific Airways Limited 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:

BLANE A. WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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