



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

Issued by the Department of Transportation
On the Twenty-Ninth day of May, 2014

Southwest Airlines Co.

**Violations of 14 CFR 399.84(a),
49 U.S.C. § 41712, and Order 2013-7-20**

Served: May 29, 2014

Docket OST-2014-0001

CONSENT ORDER

This consent order concerns violations by Southwest Airlines Co. (Southwest) of the full-fare advertising rule, 14 CFR 399.84, and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. Specifically, the carrier advertised fares for which no seats were available. These violations also constitute violations of the cease and desist provision of Order 2013-7-20. This order directs Southwest to cease and desist from future similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712 and assesses the carrier \$200,000 in civil penalties.¹

Applicable Law

As an air carrier, Southwest is subject to the advertising requirements of 14 CFR 399.84(a), which require that any advertisement or solicitation for air transportation that states a price for such transportation state the entire price to be paid. Carriers have long been on notice that as a corollary to the requirement that advertisements state the full price to be paid by the consumer, a seller of air transportation must have a reasonable

¹ Southwest has paid a civil penalty of \$100,000, the portion of the civil penalty amount assessed in Order 2013-7-20 that was suspended for one year from the date of issuance of the order. That amount became due and payable when Southwest violated the cease and desist provision of Order 2013-7-20, as outlined in the instant order.

number of seats available at the advertised price when a fare is advertised.² This means that in addition to having a reasonable number of seats available each time an advertisement is run, the carrier must also ensure that, during the overall period within which the fare is offered, there is no lengthy period of time when no seats are available.³ Once the carrier determines that a reasonable number of seats is no longer available, it must take prompt action to discontinue the advertisement, or it must modify the ad, clarifying to which destinations or date ranges the advertisement applies. Failure to have a reasonable number of seats available at the advertised fare is a violation of section 399.84(a) and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Facts and Conclusions

For a period of time in October 2013, Southwest ran a television advertisement on eight networks in the Atlanta designated market area. The ad's narrator stated: "If you think all airline choices in Atlanta are black and white, you've got another thing coming. Discover amazing low sale fares on an airline that is anything but dull. Book now only at Southwest.com with \$59 sale fares to places like New York, Los Angeles, and Chicago. Let's paint this town Southwest." The advertisement also stated certain conditions on the sale fares, including a 14-day advance purchase requirement, a purchase deadline of November 4, 2013, and travel between November 9, 2013, and March 12, 2014. A thorough investigation by the Enforcement Office revealed that Southwest did not have any seats available for \$59 between Atlanta and any of the three quoted cities on any of the applicable travel dates.

By advertising fares for which no seats were available at all, Southwest violated 14 CFR 399.84(a) and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Southwest states that it believes the Atlanta fare sale was beneficial to consumers both in Atlanta and across Southwest's system. Southwest states that over 14,000 consumers in Atlanta and 313,000 consumers nationwide benefited from the sale. In addition, Southwest states that the mention of three cities that were not part of the fare sale in the audio portion of the TV advertisement was an inadvertent error that resulted from a flawed review of advertising copy language. Southwest states that it regrets this

² Industry Letter from Secretary Pena to U.S. Air Carriers and Air Travel Industry Associations and Labor Unions (dated Dec. 20, 1994).

³ See, e.g., *Southwest Airlines Co.*, Order 2013-7-20 (July 30, 2013); *MN Airlines, LLC d/b/a Sun Country Airlines*, Order 2010-9-25 (Sept. 24, 2010); *AirTran Airways, Inc.*, Order 2010-5-29 (May 28, 2010); *American Trans Air, Inc.*, Order 97-12-1 (Dec. 1, 1997); *US Airways, Inc.*, Order 97-8-25 (Aug. 27, 1997); *Continental Airlines, Inc.*, Order 93-10-49 (Oct. 29, 1993).

mistake and as soon as the company became aware of it, Southwest immediately took steps to pull all of the incorrect advertisements off the air, the vast majority in the same day. Southwest states that this mistake was unintentional and safeguards have been put in place to ensure such an error does not occur in future sales.

Decision

The Enforcement Office has carefully considered the information provided by Southwest, but continues to believe enforcement action is warranted. In order to avoid litigation, Southwest has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Southwest to cease and desist from future similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712, and assessing \$200,000 in compromise of potential civil penalties otherwise due and payable. 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 Southwest and other carriers.

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 Southwest Airlines Co. violated 14 CFR 399.84(a) by failing to have seats available at the fares advertised in the “Let’s paint this town Southwest” television advertisement;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Southwest Airlines Co. engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We find that by engaging in the conduct described in ordering paragraph 2, above, Southwest Airlines Co. violated the cease and desist provision of Order 2013-7-20;
5. We order Southwest Airlines Co. and all other entities owned or controlled by, or under common ownership and control with Southwest Airlines Co., its successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR 399.84(a), 49 U.S.C. § 41712, and Order 2013-7-20;
6. We assess Southwest Airlines Co. \$200,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above; and

7. We order Southwest Airlines Co. to remit the payment assessed in paragraph 6, above, within 30 days of the issuance of this order. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Southwest Airlines Co. 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
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