



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

Issued by the Department of Transportation
on the Ninth day of July, 2014

Delta Air Lines, Inc.

Docket OST 2014-0001

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

Served July 9, 2014

CONSENT ORDER

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of the full fare advertising requirements specified in 14 CFR 399.84 and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Delta to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$100,000.

Applicable Law

As an air carrier, Delta is subject to the full fare advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84(b), an each way airfare that is available only when purchased for roundtrip travel must be advertised as "each way" and in such a manner that the disclosure of the roundtrip purchase requirement is clearly and conspicuously noted in the advertisement and the disclosure is stated prominently and proximately to the each way fare amount.¹ Advertisements that fail to properly disclose a

¹ On April 20, 2011, the Department issued a rule amending section 399.84 that, among other things, codified the Department's longstanding enforcement policy on advertising each way fares. Prior to the amendment, carriers had long been on notice that when advertising each way fares that are available only when purchased for roundtrip travel, the disclosure of the roundtrip purchase requirement in the advertisement must be clear and conspicuous, and prominent and proximate to the advertised fares. See, e.g., *Martinair Holland, N.V., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 1999-6-16; *America West Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399*, Order 2003-7-39; *ATA*

roundtrip purchase requirement do not comply with section 399.84(b) and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Background

From November 2012 to February 2014, Delta advertised a number of “Fare Specials” on the homepage of its website. Although the advertised fares were each way fares and required a roundtrip purchase, that condition was not clearly and conspicuously noted. Instead, each fare advertised in the “Fare Specials” section was followed by an asterisk that referred to a disclaimer at the bottom of the list of fares that stated in light-colored fine print that “Fees/restrictions/baggage fees may apply, round-trip purchase required.” The disclosure was also not stated prominently and proximately to the each way fare amount. Instead, the fares linked to a second web page containing a disclosure that the advertised fares were, in fact, each way fares subject to a roundtrip purchase requirement. As such, Delta failed to properly state that the advertised fares were “each way” fares on its homepage as specifically required by section 399.84(b). Further, the disclaimer in fine print provided by Delta at the bottom of the advertisement body was insufficient to provide clear and conspicuous notice of a roundtrip purchase requirement, and the fine print disclaimer in this case was not prominent and proximate to the advertised fare. As such, Delta violated section 399.84(b) and 49 U.S.C. § 41712 by not properly disclosing that the advertised fares were “each way” fares on its homepage.

Mitigation

In mitigation, Delta maintains that, although the fares at issue were not explicitly described as “each way” on its homepage, the risk of consumer confusion was minimal because the asterisked explanation on the homepage explicitly stated: “[R]ound-trip purchase required.” Delta contends that this notice only made sense if the fares were each way fares. Delta further states that any possible confusion would have been dispelled when the customer clicked on the “Book Now” hyperlink which would then take the customer to a second page. Delta notes that on that second page, emblazoned in large font immediately under the fare at the top of the screen, was the prominent notice, “Each-Way Based on Required Round-Trip Purchase.” Thus, according to Delta, even if a customer found the notice on the homepage confusing, there could have been no confusion after the customer viewed the second page, which was a necessary step before making a purchase.

Nevertheless, Delta states that it places a high priority on clearly and accurately representing its fares to the traveling public and certainly does not want to create any potential confusion. For that reason, Delta revised the text of the explanatory notice in the fare box on the homepage to say, “Fares displayed are each-way; round-trip purchase is required.” Further, Delta increased the size of the text and changed its color (from grey

to white) so that it stands out in greater contrast with the blue background. Delta believes that these measures fully addressed the Department's concerns and eliminated any possibility of customer confusion.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Delta, but continues to believe that enforcement action is warranted. The Enforcement Office and Delta have reached a settlement of this matter in order to avoid litigation. Without admitting any violation, Delta consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and to the assessment of \$100,000 in compromise of potential civil 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 advertising requirements by Delta 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 Delta Air Lines, Inc., violated 14 CFR 399.84(b) by publishing each-way airfare advertisements that were only available when purchased for roundtrip travel without advertising such fares as "each way" fares and by failing to clearly and conspicuously disclose the round-trip purchase requirement prominently and proximately to the each way fare amount;
3. We find that by violating 14 CFR 399.84(b) as described in ordering paragraph 2, above, Delta Air Lines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines, Inc., and its successors and assignees to cease and desist from violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Delta Air Lines, Inc., and its successors and assignees to further enforcement action;
5. We assess Delta Air Lines, Inc., a compromise civil penalty of \$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 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, Delta Air Lines, Inc., violates this order's cease-and-desist provision or fails to comply with the order's payment provision, in which case Delta Air Lines, Inc., may be subject to additional enforcement action for violation of this order; and

6. We order Delta Air Lines, Inc., to pay the compromise civil penalty assessed in ordering paragraph 5, above. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as prescribed shall subject Delta Air Lines, Inc., to the 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 initiative.

BY:

BLANE A. WORKIE

**Acting Assistant General Counsel for
Aviation Enforcement and Proceedings**

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