



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

Issued by the Department of Transportation  
On the Twenty-Fifth day of August, 2011

**Thai Airways International Public  
Company Limited**

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

**Docket OST 2011-0003**

**Served August 25, 2011**

**CONSENT ORDER**

This consent order concerns Internet advertisements by Thai Airways International Public Company Limited (Thai Airways) that violated the advertising requirements specified in 14 CFR Part 399, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Thai Airways to cease and desist from future violations of Part 399 and section 41712 and assesses the carrier a compromise civil penalty of \$70,000.

**Applicable Law**

As a foreign air carrier, Thai Airways is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertisements specifying airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from the base fare in advertisements so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their nature and amounts are clearly indicated at the first point in the advertisements where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, fare advertisements that 1) fail entirely to identify the nature and amount of separate

additional taxes and fees, 2) include only general statements regarding the existence of such taxes or fees, or 3) separately state carrier-imposed fees, such as fuel or insurance surcharges, do not comply with section 399.84 or the Department's enforcement case precedent.<sup>1</sup> Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.<sup>2</sup>

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of additional charges that properly may be stated separately from the advertised fares are disclosed. With respect to Internet fare listings, such additional charges may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra. The link must directly take the viewer to the bottom of the screen, or to a pop-up or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.<sup>3</sup>

Additionally, 49 CFR Part 1510 specifies disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are required to identify this fee *verbatim* as the "September 11th Security Fee" in all advertisements and solicitations that do not include the fee in the advertised base fare. The failure of a carrier to identify the September 11th Security Fee as required by the rule constitutes a separate and distinct violation of 49 U.S.C. § 41712.<sup>4</sup>

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<sup>1</sup> On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective January 24, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

<sup>2</sup> See, e.g., *Continental Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-6-1 (June 2, 2011).

<sup>3</sup> For example, under current policies, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

<sup>4</sup> See, e.g., *Sceptre Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2010-6-23 (June 28, 2010).

### **Facts and Conclusions**

For a period of time, consumers searching Thai Airways' U.S. website for round-trip flights from a point in the U.S. to a point outside the U.S. were not provided with information sufficient to permit them to determine the entire price to be paid at the first point fares were displayed during the booking process. Rather, consumers were provided with a selection of fares of varying amounts organized by the date of the outbound and return flight along with a statement, without further elaboration, that "[t]otal prices including taxes will be displayed at the next steps." Thus, this webpage did not provide consumers with any information describing additional taxes and fees, nor was this information presented to consumers in one of the acceptable alternative methods described above. Instead, consumers learned of the full fare amount two webpages later just prior to purchasing the fare. Additionally, Thai Airways failed to include a carrier-imposed fuel surcharge and a carrier-imposed insurance fee in the initially displayed fares, further misleading consumers with an artificially low initially advertised fare. Moreover, the September 11th Security Fee was one of the additional taxes and fees that was not included in the initially displayed fares and the carrier failed to identify the fee as required.

Thai Airways' failure to provide proper notice to consumers of the nature and amount of separately stated taxes and fees in any of the acceptable ways described above and its failure to include carrier-imposed fees in the initially advertised fare violated 14 CFR 399.84 and 49 U.S.C. § 41712. Furthermore, Thai Airways' failure to label the "September 11th Security Fee" *verbatim* as described above violated 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Thai Airways states that it takes seriously its responsibility to comply with all applicable laws and regulations, including the Department's rules. According to Thai Airways, any violations regarding the fare displays on its U.S. website were inadvertent and at no time did Thai Airways intend to misinform or mislead consumers. Thai Airways asserts that consumers were provided with the full amount they would have to pay prior to purchase. Furthermore, Thai Airways states that it is not aware of any complaints from consumers relating to the display of fares and related fees and taxes on its website.

Thai Airways states that it cooperated fully with the Department's investigation of this matter. When the Enforcement Office advised Thai Airways of its concerns, Thai Airways revised its website to comply with the Department's rules and has since reviewed its internal procedures to ensure that the fares displayed on its website will comply with the Department's requirements in the future.

### **Decision**

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Thai Airways and continues to believe that enforcement action is warranted. The Enforcement Office and Thai Airways have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Thai Airways 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 \$70,000 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 against future noncompliance with the Department's advertising requirements.

This order is issued under the authority 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 Thai Airways International Public Company Limited violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, and by not identifying in its Internet advertisements the September 11th Security Fee, as required by 49 CFR 1510.7, Thai Airways International Public Company Limited also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Thai Airways International Public Company Limited, and all other entities owned or controlled by or under the common ownership and control with Thai Airways International Public Company Limited, and its successors and assignees to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Thai Airways International Public Company Limited and its successors and assignees to further enforcement action;
5. We assess Thai Airways International Public Company Limited a civil penalty of \$70,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$35,000 shall be due and payable within 30 days of the date of the issuance of this order. Any unpaid portion of the assessed civil penalty shall be due and payable immediately if Thai Airways

International Public Company Limited violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and

6. We order Thai Airways International Public Company Limited to remit the payment ordered in paragraph 5 above, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," 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 Thai Airways International Public Company Limited to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to additional 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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

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