



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

Issued by the Department of Transportation
On the Eighteenth day of March, 2011

Cayman Airways, Ltd.

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

Docket OST 2011-0003

Served March 18, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Cayman Airways, Ltd., (Cayman) that violate 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 Cayman to cease and desist from future violations of Part 399 and section 41712, and assesses the carrier a compromise civil penalty of \$40,000.

Applicable Law

As a foreign air carrier, Cayman is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertising 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 base fares 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 existence 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, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate

additional taxes and fees at the first point at which a fare is displayed, 2) include only general statements regarding the existence of such taxes and fees, or 3) separately state carrier-imposed surcharges do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.¹

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 the fees that may be stated separately are shown. In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Facts and Conclusions

For a period of time in late 2010, Cayman advertised on its website numerous sale fares between the Cayman Islands and points in the United States with accompanying asterisks, but failed to disclose that taxes and fees were extra in any of the acceptable ways described above. Each advertisement stated a fare that the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) determined did not include additional taxes and fees. While Cayman stated below each fare that "taxes & conditions apply," this summary statement did not provide any information about the nature or amount of additional taxes and fees. Furthermore, while the advertisements included hyperlinks, the links did not take viewers directly to a separate screen or directly to a pop-up where the nature and amount of excludable taxes and fees were displayed. Instead, the hyperlink took consumers to a second page containing a more detailed description of the sale, where viewers had to scroll past the first screen to the fine print at the bottom of the page in order to learn of the nature and exact amounts of taxes and fees, including a carrier-imposed surcharge of \$5.00 or \$13.00 on some routes. As outlined above, using only general statements regarding the existence of additional taxes and fees and separately listing carrier-imposed fees contravenes 14 CFR 399.84 and 49 U.S.C. § 41712.

¹ See, e.g., *Air Jamaica, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-12-25 (December 30, 2008).

² For example, 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 the 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>.

Mitigation

In mitigation, Cayman reaffirms its commitment to providing complete and accurate information about its airfares to consumers and points out that it had revised its advertisements prior to receiving any notice from the Enforcement Office to do so. Cayman points out that the Enforcement Office has not claimed that Cayman failed to disclose the amount and nature of additional taxes and fees, only that the disclosure was, in the opinion of the Enforcement Office, not proximate and prominent to the advertised base fare. Consumers interested in determining the exact amount and nature of additional taxes and fees were able to do so by following the applicable hyperlink to the terms and conditions. Further, Cayman states that the additional taxes and fees applicable to its flights are comparable to those charged by other carriers in its markets. Cayman reports that it has no record of receiving any consumer complaints about the additional taxes and fees that are the subject of this consent order, and it has implemented a training and review procedure to ensure that future advertisements clearly state these charges. Cayman asserts that for a carrier of its size with limited, seasonal operations to and from the United States, its commitment to customer satisfaction, including during the booking process, is exemplary.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Cayman and continues to believe that enforcement action is warranted. The Enforcement Office and Cayman have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Cayman 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 \$40,000 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 by Cayman and other sellers of air transportation.

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 Cayman Airways, Ltd., 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 paragraph 2 above, Cayman Airways, Ltd., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Cayman Airways, Ltd., and all other entities owned or controlled by, or under common ownership and control with Cayman Airways, Ltd., their successors, affiliates, and assigns, 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 Cayman Airways, Ltd., and their successors and assignees to further enforcement action;
5. We assess Cayman Airways, Ltd., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$20,000 shall become due and payable immediately if Cayman Airways, Ltd., violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order Cayman Airways, Ltd., 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 Cayman Airways, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible 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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