



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

Issued by the Department of Transportation
on the 22nd day of January, 2015

Lufthansa German Airlines

Violations of 49 U.S.C. § 41712

Docket OST 2015-0002

Served January 22, 2015

CONSENT ORDER

This order concerns violations by Lufthansa German Airlines (Lufthansa) of the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Lufthansa to cease and desist from future similar violations and assesses the carrier \$30,000 in civil penalties.

Applicable Law

As a foreign air carrier, Lufthansa is subject to 49 U.S.C. § 41712, which grants the Department broad authority to prohibit unfair or deceptive practices or unfair methods of competition in air transportation. A practice is deemed to be unlawful if it is likely to mislead a consumer acting reasonably in the circumstances to his or her detriment. It is misleading for a carrier to advertise on its website a fare for a specific itinerary but not make that fare available for purchase on that website. This means that if a carrier advertises a fare for a specific itinerary in response to a consumer search on its Internet website, that fare must be available for purchase on that website. The Department holds that providing erroneous and misleading information in connection with fare advertisements to be a violation of 49 U.S.C. § 41712.¹

¹ Cf. *Spirit Airlines*, Order 2008-12-14 (December 23, 2008); See also *Industry Letter from Secretary Peña to U.S. Air Carriers and Air Travel Industry Associations and Labor Unions* (dated December 20, 1994).

Facts

In response to a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Lufthansa's U.S. website. The Enforcement Office found that for a short period in November 2013, Lufthansa advertised fares in its fare matrix that could not be purchased on its website depending on how a consumer entered his or her search parameters.² Specifically, in response to certain consumer searches for a roundtrip fare to and from the United States, Lufthansa's U.S. website first displayed a fare matrix that included economy fares that were the lowest fares purportedly available for specific date combinations. However, in some instances after selecting an itinerary and proceeding through the booking process, the lowest fares that were advertised in the fare matrix were omitted. Therefore, certain consumers could not purchase the lowest fares on website. By advertising fares on its U.S. website that could not be purchased on that website, Lufthansa violated 49 U.S.C. § 41712.

Mitigation

In mitigation, Lufthansa states that it is fully committed to compliance with respect to aviation consumer protection laws. According to the carrier, Lufthansa Group carriers have been at the forefront of customer satisfaction and voluntarily implemented many of the policies contained in the Enhanced Airline Passenger Protection regulations and Part 382 before their enactment.

Lufthansa states that at no point in time were there "no seats available" for purchase at the listed fares. Lufthansa states that there were in fact numerous seats at the lowest fare booking class readily available for purchase but due to an inadvertent technical error, the fare sale was not available on the website for a limited time. Lufthansa emphasizes that it did not receive any consumer complaints and the Department received only one consumer complaint concerning the lack of availability of the fares. Furthermore, Lufthansa states that it proactively contacted the passenger and honored the quoted fare.

Lufthansa explains that during a periodic system update to its website, fares for the lowest booking class failed to properly update. Lufthansa further explains that due to this technical error, the lowest fares were displayed on the Fare Matrix page, but may not have been displayed on the Fare Selection page where the customer would make their final flight selection depending on how a consumer entered his or her search parameters. Lufthansa states that this technical error did not affect searches for one-way and multi-stop flights, searches based on flight flexibility, or tickets sold in other distribution channels, such as booking through travel agents or through Lufthansa's own telephone reservations centers. Lufthansa states that upon learning of the technical problem, it took immediate corrective action to fix the problem.

² Lufthansa states that the technical error only affected searches for roundtrip flights originating from the United States; searches for one-way and multi-stop flights were unaffected.

Lufthansa states that it respectfully disagrees with the Enforcement Office's view that a technical malfunction of its website constitutes a violation of 49 U.S.C. § 41712. Lufthansa states that, in the interest of settling this proceeding, and without conceding or waiving its legal position on that question, it is agreeing to a settlement in this matter.

Decision

The Enforcement Office has carefully considered the information provided by Lufthansa, but continues to believe enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Lufthansa have agreed to settlement in this matter. Without admitting or denying the violations described above, Lufthansa consents to the issuance of this order to cease and desist from future similar violations 49 U.S.C. § 41712, and to the assessment of \$30,000 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 Lufthansa 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 Lufthansa German Airlines violated 49 U.S.C. § 41712 by advertising fares in response to consumer searches on its U.S. website that could not be purchased on that website;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Lufthansa German Airlines;
4. We order Lufthansa German Airlines, its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with Lufthansa German Airlines, its successors, its affiliates, and its assigns to cease and desist from future similar violations of 49 U.S.C. § 41712;
5. We assess Lufthansa German Airlines \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, above. Of this total penalty amount, \$15,000 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, \$15,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Lufthansa German Airlines violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Lufthansa German Airlines may be subject to additional enforcement action for violation of this order; and

6. We order Lufthansa German Airlines 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 Lufthansa German Airlines 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
Assistant General Counsel for
Aviation Enforcement and Proceedings

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