



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

Issued by the Department of Transportation
On the Second day of December, 2010

Caribbean Airlines Limited

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

Docket OST 2010-0005

Served December 2, 2010

CONSENT ORDER

This consent order concerns Internet advertisements by Caribbean Airlines Limited (CAL) that violated the full fare advertisement requirements specified in 14 CFR Part 399 as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs CAL 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, CAL is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84 of those rules, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. Under long-standing enforcement case precedent, the Department permits taxes and fees, such as passenger facility charges and departure taxes, that are collected by carriers and other sellers of air transportation to be stated separately in advertisements, so long as the charges are levied by a government entity and are collected on a per-passenger basis. Thus, for example, passenger facility charges (PFC) and international departure taxes, with proper disclosure, may be stated separately from the advertised base fare, but *ad*

valorem taxes, such as the federal transportation excise tax and carrier- or agent-imposed fees and charges, such as fuel surcharges or insurance surcharges, may not be stated separately from the advertised base fare.¹

Further, in Internet advertising displays, the full fare may be stated on the first screen that displays fares or a base fare may be displayed so long as the existence and amount of permissible separately-stated additional charges are prominently disclosed on that page or through a clearly presented hyperlink that takes the consumer directly to a place on another page showing the nature and amounts of those charges. Failure to comply with these requirements violates section 399.84 and Department case precedent and constitutes an unfair and deceptive trade practice.²

In addition, as detailed in 49 CFR Part 1510, there are specific 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 specifically required to identify and ensure that their agents identify this fee as the “September 11th Security Fee” in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. This office considers the failure of a carrier or ticket agent to identify the September 11th Security Fee as required by section 1510.7 to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.³

Facts and Conclusions

Between March 2010 and July 2010, CAL posted Internet fare advertisements on its website that quoted prices for numerous airfares that did not include applicable fuel surcharges. By failing to include fuel surcharges in its base fares, CAL violated 14 CFR 399.84 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

¹ See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc.*, OST Docket 2009-0002, Order 2009-11-8 (Nov. 9, 2009). See also Department notices entitled *Disclosure of Airfare Variations: Web vs. Other Sources; Surcharges that may be Listed Separately in Advertisements* (Nov. 4, 2004); *Disclosure of Additional Fees, Charges, and Restrictions on Airfare Advertisements, Including ‘Free’ Airfares* (Sept. 4, 2003); and *Prohibition on Deceptive Practices in Marketing of Airfares to the Public Using the Internet* (Jan. 18, 2001). All notices are available at <http://airconsumer.ost.dot.gov/rules/guidance.html>.

² 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).

³ See, e.g., *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12 (Jan. 16, 2003).

Further, on CAL's Internet website, when consumers initiated searches for round-trip airfares, the search procedure began with a four-step, four-page process, depending on the prospective customer's flexibility regarding travel dates. On the initial screen, consumers were required to enter their desired routes and departure dates and, via a selection feature, their travel-date flexibility, i.e., either "Exact dates" of travel or "Flexible dates."⁴ Consumers who desired round-trip travel on "Flexible dates" entered this information and on the second page were presented with the lowest available fare on each day CAL operated. At this point in the booking process, CAL presented customers with a set of fares corresponding to their search parameters that did not include additional government taxes and fees, and did not provide consumers any notice on that page that additional taxes and fees were applicable to the airfares listed. By failing to provide any notice of the existence, nature and amount of the taxes and fees applicable to these fares at the first point the fares were disclosed to consumers, CAL violated 14 CFR 399.84 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Moreover, the September 11th Security Fee was one of the additional taxes and fees that was not included in the advertised price and was not disclosed as required, which constitutes a separate and distinct violation of section 41712.

Mitigation

In mitigation, CAL states that the failure of its Internet booking engine to display properly all fare components in accordance with Department policy was unintentional, as CAL had relied on a new, third-party booking vendor's assurances that the booking engine would so comply. When the Enforcement Office advised CAL of its concerns, CAL states that it immediately directed its vendor to remove the functions at issue and worked with that vendor to modify them. CAL points out that it cooperated fully with the Department in resolving this matter and reaffirms its goal of providing potential customers with full and transparent fare information that meets the Department's requirements.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by CAL, but continues to believe that enforcement action is warranted. The Enforcement Office and CAL have reached a settlement of this matter in order to avoid litigation. CAL, without admitting or denying any violation, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and Part 399 of the Department's regulations, and to the assessment of \$40,000 in compromise of potential civil penalties otherwise assessable pursuant to 49 U.S.C. § 46301.

⁴ If a customer indicated that he or she had no flexibility regarding dates from his/her desired travel date, the purchase process was shortened to three-steps/three pages. We note that the violations described herein did not occur when a consumer followed the abbreviated process.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by CAL, as well as by other air carriers and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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 CAL violated 14 CFR 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid by the consumer at the first point at which the fare was displayed;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, and by not identifying the September 11th Security Fee in its Internet advertisements, as required by 49 CFR 1510.7, CAL also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order CAL and all other entities owned or controlled by or under common ownership with CAL and their successors and assignees, to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. We assess CAL a compromise civil penalty of \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$20,000 shall be due and payable within thirty (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 CAL violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and
6. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers should be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered shall subject CAL to an 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 ten (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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