



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

Issued by the Department of Transportation
On the 29th day of October, 2010

Alaska Airlines, Inc.

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

Docket OST 2010-0005

Served October 29, 2010

CONSENT ORDER

This consent order concerns violations by Alaska Airlines, Inc., (Alaska) 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. This order directs Alaska to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

As an air carrier, Alaska 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 existence and amounts are clearly indicated at the first point in the advertisement 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, or 2) include only

general statements regarding the existence of such taxes and fees, do not comply with section 399.84, or the Department's enforcement case precedent. Additionally, the Department has provided guidance advising the industry that conditions related to "free" tickets, such as a requirement to pay taxes and fees, should be noted prominently and proximately to the offer for a free ticket, at a minimum through the use of an asterisk or other symbol that directs the reader's attention to the information explaining the condition in easily readable print elsewhere in the advertisement. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fares that notes that taxes and fees are extra and directly takes the viewer 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.¹

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 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 the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.²

Background

During an on-site regulatory compliance inspection at Alaska's corporate headquarters, staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), discovered that many of Alaska's published advertisements failed to properly indicate at the first point in the advertisement where a fare is presented the existence and amounts of excludable taxes and fees. Furthermore, Alaska published advertisements noting that "Kids Fly Free," but failed entirely to identify the existence and amount of additional taxes and fees that must be paid in order to take advantage of the offer of "free" transportation. Finally, in all published advertisements reviewed by the

¹ For example, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language 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>.

² See, e.g., *Sceptre Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2010-6-23 (Jun. 28, 2010).

Enforcement Office, Alaska denotes the September 11th Security Fee as the “U.S. Security Fee”. Accordingly, Alaska’s advertisements violated the Department’s full-fare advertising rule, 14 CFR 399.84, and the prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712. Alaska engaged in a separate violation of 49 U.S.C. § 41712 by failing to identify the September 11th Security Fee as required by section 1510.

Mitigation

In mitigation and explanation, Alaska states that it takes compliance with government requirements seriously. Alaska further states that it has maintained transparency and cooperation during the Enforcement Office’s compliance review and in its everyday dealings with the Department. Alaska also states that after the Enforcement Office asked for a sampling of advertisements during its compliance inspection, Alaska disclosed to the Enforcement Office that its “Kids Fly Free” advertising campaign did not comply with the Department’s full fare advertising requirements. As for the other advertising concerns highlighted by the Enforcement Office, Alaska states that it immediately modified its advertisements to comply with Department regulations and modified its internal review policy to ensure each advertisement undergoes legal review before being published.

Decision

The Enforcement Office has carefully considered the information provided by Alaska Airlines, Inc., but continues to believe that enforcement action is warranted. The Enforcement Office and Alaska Airlines, Inc., have reached a settlement of this matter in order to avoid litigation. Alaska Airlines, Inc., without admitting any violation, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department’s regulations, and to the assessment of \$50,000 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 an adequate deterrence to future noncompliance with the Department’s advertising requirements by Alaska Airlines, Inc., 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 Alaska Airlines, Inc., violated 14 CFR 399.84 by publishing fare advertisements that did not state the full price to be paid;

3. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, Alaska Airlines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We find that by failing to identify the September 11th Security Fee as required by section 1510.7, Alaska Airlines, Inc., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
5. We order Alaska Airlines, Inc., and all other entities owned or controlled by or under common ownership with Alaska Airlines, Inc., and their 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 Alaska Airlines, Inc., and their successors and assignees to further enforcement action;
6. We assess Alaska Airlines, Inc., a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above; and
7. We order Alaska Airlines, Inc., to pay, within 15 days of the date of issuance of this order, the compromise civil penalty of \$50,000 assessed in ordering paragraph 6 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 Alaska Airlines, Inc., 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:

ROSALIND A. KNAPP
Deputy General Counsel

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