



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

**Issued by the Department of Transportation
On the 28th day of May, 2010**

Delta Air Lines, Inc.

Docket OST 2010-0005

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

Served May 28, 2010

CONSENT ORDER

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of the full fare advertisement requirements specified in 14 CFR Part 399 and 49 U.S.C. § 41712, which prohibit unfair and deceptive practices. This order directs Delta to cease and desist from future violations, and assesses the carrier a compromise civil penalty of \$40,000.

Delta, as an air carrier, 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, are not ad valorem in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated so that consumers can determine the full fare to be paid. On Internet displays, these charges may be noted through a prominent link placed next to the stated fare that advises the viewer that taxes and fees are extra and takes the viewer to the bottom of the screen, or directly to a separate screen, where the nature and amount of such fees are displayed.

Delta advertised fares on the "Deals & Offers" section of its website that did not contain appropriate notice of the amount or nature of additional taxes and fees that were excluded from the advertised fare at the first point in which the fares were displayed. These fares

were followed by an asterisk that referred the reader to a statement below the quoted fares that stated, “Additional taxes/fees/restrictions/baggage charges may apply – see individual sale for more details.” The summary statement did not detail what additional taxes and fees were not included in the advertised fares, or their amounts. Furthermore, the statement that taxes and fees are additional was not a hyperlink; rather, the name of the city being featured was the hyperlink and, while it was adjacent to the advertised fare, it did not take viewers directly to a separate screen or directly to a pop-up where the nature and amount of excluded taxes and fees were displayed. Instead, the hyperlink took viewers to a second page containing a more detailed description of the sale, where viewers had to scroll down past the first screen to the bottom of that page to see the required tax and fee disclosures. By failing to provide appropriate notice of the taxes and fees applicable to these fares, Delta violated 14 CFR 399.84 and engaged in an unfair or deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Delta states that it did not violate the Department’s full fare rule and did not engage in an unfair or deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Delta asserts that its Internet display, which combined asterisked and single hyperlink notification (both of which are permitted under the Department’s full fare guidelines), fully complied with the Department’s requirements. For example, Delta asserts that its “Deals & Offers” webpage notified customers of the taxes and fees at the first point of the fare display by placing an asterisk prominently and proximately next to the column labeled “One-way Fares” and by providing a concise summary explanation immediately below the listed fares in the same font and text size as the displayed fares. Delta states that the asterisked disclosure complied with the Department’s guidance. Delta also asserts that its use of a single hyperlink from the “Deals & Offers” page directing the customer to a webpage which contained the full explanation of the applicable taxes and fees was consistent with the Department’s guidance and precedent. Delta notes that at all times in this matter it has fully cooperated with the Department and that, despite its disagreement with the Enforcement Office’s interpretation of the full fare guidance, it promptly changed its website in accordance with that interpretation.

The Department views compliance with its full-price advertising rule seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Delta Air Lines, Inc., but continues to believe that enforcement action is warranted. In particular, we wish to make clear that, contrary to Delta’s stated understanding, in permitting Internet fare advertisers to disclose through a hyperlink the taxes and fees that may properly be stated separately from the advertised fare, the Department always has required that the hyperlink itself be clear and take the reader directly to the place on the linked screen (or a pop-up) where the required tax and fee disclosures are made. It does consumers seeking information on taxes and fees little good to have an obscure link to that information and then to be taken to a place on a webpage that requires the consumer to search through one or more screens for that important information. Delta states that, although it believes enforcement action is not warranted, it has agreed to settle this matter without admitting to a violation to avoid the burden and expense of litigation. Thus, in order to avoid litigation, the Enforcement

Office and Delta have reached a settlement in this matter in which Delta, while not admitting the above allegations, accepts the findings and conclusions stated herein. Delta Air Lines, Inc., 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 of the Department's regulations, 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 an adequate deterrence to future noncompliance with the Department's advertising requirements by Delta Air Lines, Inc., as well as by other air carriers, foreign air carriers, and other sellers of air transportation.

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 Delta Air Lines, Inc., violated 14 CFR 399.84 by causing to be published air fare advertisements that failed to state the entire price to be paid by the consumer at the *first* point at which the fare is displayed;
3. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, Delta Air Lines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines, Inc., and all other entities owned or controlled by or under common ownership with Delta Air Lines, Inc., and their successors and assignees, to cease and desist from violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. We assess Delta Air Lines, Inc., 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. Failure to pay the penalty as ordered shall subject Delta Air Lines, Inc., 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; and
6. Payment shall be made within 15 days of the issuance date of this order by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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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