



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

**Issued by the Department of Transportation
On the 10th day of August, 2009**

Continental Airlines, Inc.

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

Docket OST 2009-0001

Served August 10, 2009

CONSENT ORDER

This consent order concerns Internet advertisements by Continental Airlines, Inc., (Continental) that violate the full fare advertisement requirements specified in 14 CFR Part 399 and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. This order directs Continental to cease and desist from future violations, and assesses the carrier a compromise civil penalty of \$75,000.

Continental, 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 or approved 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. In addition, carriers have long been on notice that they may advertise each-way fares that are available only when bought for roundtrip travel only so long as the disclosure of the roundtrip purchase requirement in the advertisement is clear and conspicuous, i.e., prominent and proximate

to the advertised fares.¹ The Department has concluded that advertisements that fail to properly disclose a roundtrip purchase requirement do not comply with section 399.84 and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.²

For a period of time, Continental advertised fares on the main “Special Offers” webpage and on subsequent pages internal to that section of the 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 or at least via a hyperlink that would take consumers directly to a webpage or pop-up that contains the appropriate notice. Potential customers were presented initially with a page listing choices of base fares that applied to various featured destinations, only to be shown on a subsequent page the amount of taxes and fees that were in addition to those base fares.

Furthermore, Continental quoted numerous fares for travel between various featured destinations followed only by the statements “each way” or “one-way.” For example, one quoted fare advertised, “Europe Summer Sale fares starting at \$186 each way,” and another stated, “Explore the stunning natural scenery of Canada with fares starting at \$93 one way.” Despite the fact that such fares were available only if purchased on a roundtrip basis, Continental failed to provide the clear and conspicuous disclosures of the roundtrip purchase requirement proximate to the advertised fares required by the Department’s long-standing enforcement case precedent. It was only after selecting a “special offer” and being taken to a subsequent webpage that consumers were made aware of the existence of the roundtrip purchase requirement.

In mitigation and explanation, Continental states that it is committed to full compliance with the Department’s full fare advertising requirements and all applicable laws and regulations, and that Continental cooperated fully with the Department in this matter. Continental asserts that customers received appropriate notice about taxes and fees multiple times subsequent to the initial display of the fares, including when selecting a specific itinerary, completing necessary steps in the booking process, and immediately before purchasing a ticket. Continental points out that on a proactive and voluntary basis it took immediate action to modify its webpage to address the Department’s concerns fully and effectively. In addition, Continental states that it has bolstered its website compliance process further to help ensure that these issues do not arise in future website advertising. Continental emphasizes that any alleged non-compliance on its part with the Department’s full fare advertising requirements was completely unintentional and inadvertent.

We view seriously the failure of Continental Airlines, Inc., to state the entire price to be paid by the consumer at the *first* point at which the fare is displayed as required by

¹ Letter from Office of Aviation Enforcement and Proceedings to U.S. and Foreign Air Carriers, March 9, 1995 (<http://airconsumer.ost.dot.gov/rules/19950309.htm>).

² See, e.g., *Martinair Holland, N.V., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 1999-6-16; *America West Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399*, Order 2003-7-39; *Aer Lingus Limited, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2004-5-9; *ATA Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2005-10-11.

14 CFR Part 399. Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation and without admitting or denying any alleged violations, Continental Airlines, Inc., agrees to the issuance of this order to cease and desist from future similar violations of Part 399 and 49 U.S.C. § 41712, and to the assessment of \$75,000 in compromise of potential civil penalties otherwise assessable against it, which amount is payable as described in the ordering paragraphs below. We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a meaningful incentive to all airlines to comply with the Department's full fare advertising rule.

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 Continental Airlines, Inc., 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 is displayed;
3. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, Continental Airlines, Inc., has engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Continental Airlines, Inc., and all other entities owned or controlled by or under common ownership with Continental Airlines, 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 Continental Airlines, Inc., a compromise civil penalty of \$75,000 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, \$37,500 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$37,500 shall become due and payable if Continental Airlines, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Continental Airlines, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject Continental Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; 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 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

(SEAL)

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