



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

Issued by the Department of Transportation
On the 19th day of April 2006

**Compania Mexicana de Aviacion
S.A. de C.V.**

Docket OST 2006-23528

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

Served April 19, 2006

CONSENT ORDER

This consent order concerns advertisements published by Compania Mexicana de Aviacion S.A. de C.V. (Mexicana) that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84, and thereby violated the statutory proscription in 49 U.S.C. § 41712 against unfair and deceptive practices. In advertisements published in several widely circulated newspapers between November 2005 and February 2006, the carrier offered fares without appropriately disclosing all taxes and fees associated with the quoted fares. The order directs Mexicana to cease and desist from further violations and assesses a compromise civil penalty.

To ensure that consumers are given accurate and complete fare information on which to base their airline travel plans, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged the consumer. Violations of section 399.84 also constitute violations of 49 U.S.C. § 41712 which prohibits unfair and deceptive trade practices and unfair methods of competition. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are approved or 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 in the advertisement so that the consumer can determine the full fare to be paid. However, other additional carrier fees and charges, including any fuel surcharges or other surcharges, must be included in the advertised fare. The Mexicana advertisements in question stated fares for flights from Baltimore to Mexico City and in the fine print of the advertisement also stated that, "Fares do not include US or Mexican government imposed fee," but failed to state the amount of such charges. The advertisements in question, by failing to provide a statement as to the amount of additional charges, therefore violated the Department rule

and constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Mexicana advises that the non-compliant advertisements were prepared by the limited staff available over the past Christmas-New Year's holiday season and were not subject to review by the carrier's more senior management. The carrier states that it promptly stopped publication of the advertisements when it was contacted by the Enforcement Office. Furthermore, the carrier asserts that it has received no complaints from the public regarding its advertising practices. In addition, the carrier points out that thirty of forty-one advertisements in question fully met the requirements of the Department's full price disclosure policy.

We consider any advertisement which does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84, and, while we acknowledge that Mexicana has been cooperative in our investigation, we believe that enforcement action is warranted in this instance. Mexicana, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 in future advertisements and to an assessment of \$30,000 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, is intended as a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Mexicana, as well as by 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 Compania Mexicana de Aviacion S.A. de C.V., violated 14 CFR 399.84 by advertising promotional fares in a number of widely circulated print publications that failed to disclose all additional taxes and fees, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Compania Mexicana de Aviacion S.A. de C.V., violated 49 U.S.C. § 41712;
4. Compania Mexicana de Aviacion S.A. de C.V., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Compania Mexicana de Aviacion S.A. de C.V., is assessed \$30,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$15,000 shall be due and payable

within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Compania Mexicana de Aviacion S.A. de C.V complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Compania Mexicana de Aviacion S.A. de C.V may be subject to further enforcement action; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Compania Mexicana de Aviacion S.A. de C.V., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure 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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