



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

Issued by the Department of Transportation
on the 21st day of May, 2015

Hawaiian Airlines, Inc.

**Violations of 14 CFR 254.4, 14 CFR 259.5,
14 CFR 399.84(a), and 49 U.S.C. § 41712**

Docket OST 2015-0002

Served May 21, 2015

CONSENT ORDER

This order concerns violations by Hawaiian Airlines, Inc., (Hawaiian) of 14 CFR Part 254, 14 CFR Part 259, 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. This order directs Hawaiian to cease and desist from future similar violations and assesses the carrier \$160,000 in civil penalties.

Domestic Baggage Liability

As a certificated air carrier that operates scheduled passenger service with at least one aircraft originally designed to have a passenger capacity of 30 or more seats, Hawaiian is subject to the requirements in 14 CFR Parts 254 and 259. 14 CFR 254.4 states that an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage to an amount less than \$3,300 per passenger for travel before June 6, 2013, and \$3,400 for travel on or after June 6, 2013.¹ On October 9, 2009, we issued an industry notice explaining that we would pursue enforcement action if a carrier limited its liability on expense reimbursement incurred in cases involving lost, damaged, or delayed baggage to

¹ On March 8, 2013, the Department issued a final rule that raised the minimum limit on domestic baggage liability applicable to air carriers. 78 Fed. Reg. 14913. Section 254.6 requires the Department to review every two years the minimum limit of liability prescribed in Part 254 in light of changes in the Consumer Price Index for All Urban Consumers (CPI-U) and to revise the limit of liability to reflect changes in that index.

less than \$3,300 per passenger.² To meet the requirements of Part 254, carriers must remain willing to cover all reasonable, actual, and verifiable expenses related to baggage loss, damage or delay up to the amount stated in Part 254.³ In addition, carriers' contracts of carriage, supplemental printed materials, and correspondences with consumers must not include terms and language that set arbitrary limits on reimbursements, apart from those set forth in Part 254.⁴ Further, pursuant to 14 CFR 259.5, a covered carrier must adopt and adhere to a customer service plan that includes, among other things, a commitment to compensate passengers for reasonable expenses that result due to the delay in delivery of baggage. Violations of Parts 254 and 259 constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In response to a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Hawaiian's policies and practices in connection with its handling of monetary claims for mishandled checked baggage on domestic flights. A review of consumer baggage claims received by Hawaiian revealed numerous instances in which the carrier informed consumers that reimbursement for damages associated with delayed baggage was limited to \$30.00 a day for a maximum of three days. The Enforcement Office also found several instances in which Hawaiian limited reimbursement for damages associated with delayed baggage to \$30.00 a day for a maximum of three days regardless of the specific facts of the claims. In those instances, Hawaiian's actions effectively limited its liability for damage occasioned by the delay of checked baggage to an amount far less than the minimum level required by section 254.4.

Furthermore, pursuant to 14 CFR 259.5, Hawaiian adopted a Customer Service Plan and made it available on its website. In this Customer Service Plan, Hawaiian pledges that, among other things, it will compensate passengers for all reasonable expenses that result due to delay in delivery for domestic flights and as required by applicable international agreements for international flights. Hawaiian's failure to adhere to this commitment violates 14 CFR 259.5.

By arbitrarily limiting liability for damages associated with delayed baggage to an amount less than the minimum level required by section 254.4, Hawaiian violated 14 CFR 254.4 and 14 CFR 259.5(b)(3) and engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712.

² *Guidance on Reimbursement of Passenger Expenses Incurred as a Result of Lost, Damaged or Delayed Baggage*, available at <http://airconsumer.ost.dot.gov/rules/Notice.Expense.Reimburse.final.pdf> (October 9, 2009).

³ *Id.*

⁴ *Id.*

Advertising

Hawaiian is also subject to the advertising requirements of 14 CFR Part 399 of the Department's rules. To ensure consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, 14 CFR 399.84(a) requires that advertisements specifying air fares and air tour packages state the entire price to be paid by the consumer.

Sellers of air transportation have long been on notice that, as a corollary to the requirement that advertisements state the full price to be paid by the consumer, a seller of air transportation must have a reasonable number of seats available at the advertised price when a fare is advertised.⁵ Once the seller determines that a reasonable number of seats are no longer available, it must take prompt action to discontinue the advertisement or to modify the advertisement to make clear to which destinations or date ranges the advertisement applies.⁶ Failure to have a reasonable number of seats available at the advertised fare is a violation of section 399.84(a) and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In response to a consumer complaint, the Enforcement Office investigated a promotional program associated with the Hawaiian Visa Signature credit card program. The Enforcement Office found that between May 2013 and July 2013, Hawaiian advertised fares that could not be purchased. Specifically, the Enforcement Office found that in mid-2013, Hawaiian conducted an advertising campaign to promote its Visa Signature credit card program. Hawaiian advertised a "one-time 50% round-trip companion travel discount" for flights between North America and Hawaii if consumers signed up for the Hawaiian Visa Signature credit card. Consumers could redeem the promotion by searching for and booking two roundtrip tickets between North America and Hawaii on Hawaiian's website, www.hawaiianairlines.com, and entering an eCertificate code before submitting payment. When consumers searched for two roundtrip fares, the Hawaiian website initially advertised fares that were the lowest fare purportedly available. However, after proceeding through the booking process and entering the eCertificate code, consumers were presented with much higher fares for the same flight and the 50 percent discount was applied to this higher fare. According to Hawaiian, the lowest fares that were initially advertised were not available due to a technical error.

⁵ In addition to having a reasonable number of seats available each time an advertisement is run, sellers must also ensure that, during the overall period within which the fare is offered, there is no lengthy period of time when no seats are available. *See, e.g., Southwest Airlines Co.*, Order 2013-7-20 (July 30, 2013); *MN Airlines, LLC d/b/a Sun Country Airlines*, Order 2010-9-25 (September 24, 2010); *AirTran Airways, Inc.*, Order 2010-5-29 (May 28, 2010); *American Trans Air, Inc.*, Order 97-12-1 (December 1, 1997); *US Airways, Inc.*, Order 97-8-25 (August 27, 1997); *Continental Airlines, Inc.*, Order 93-10-49 (October 29, 1993).

⁶ *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, Section IX, Question 15, pg. 26 (Issued August 19, 2011; last revised June 15, 2012), available at <http://www.dot.gov/airconsumer/aviation-rules>.

By advertising fares for which a reasonable number of seats were not available, and advertising fares that were not available at all, Hawaiian violated 14 CFR 399.84(a) and engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Hawaiian states that delivery of superior customer service is a fundamental goal of the airline, and that this commitment to customer service extends to fulfilling its obligations when delivery of a passenger's baggage has been delayed. Hawaiian respectfully submits that the incidents cited by the Department resulted from a misinterpretation of guidance issued to claims agents by Hawaiian about what constitutes reasonable compensation as a limitation on compensation. Hawaiian states that it has undertaken an extensive training effort to correct this miscommunication, including clarifying the policy, holding one-on-one meetings between managers and claims agents to reinforce Hawaiian's interim expense policy, and instituting an audit process to ensure interim expense claims are processed in compliance with DOT regulations.

Hawaiian states that its commitment to improve its performance is further demonstrated by its investments in technology. Hawaiian states that it has plans to test and deploy systems that will enhance the quality of its services to customers by increasing the reliability of Hawaiian's baggage delivery system as well as improving communications between the airline and customers whose bags have been delayed. Hawaiian further states that it will support this technology initiative with further investments in the training of its employees.

With respect to the Visa Signature credit card program issue, Hawaiian explains that the problem arose from a technical glitch that occurred in connection with Hawaiian's migration to new inventory classes for its fares. Hawaiian states that as a result of the glitch, e-certificate holders were prevented from accessing certain fare classes. Hawaiian further states that the inaccessible fare classes may or may not have had inventory available for the passenger to book a flight. Hawaiian states that not only did it act promptly to resolve the glitch, but it believes that this technical issue was a one-time occurrence that is not likely to be repeated.

Decision

The Enforcement Office has carefully considered the information provided by Hawaiian, but continues to believe enforcement action is warranted. In order to avoid litigation, Hawaiian has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Hawaiian to cease and desist from future similar violations of 14 CFR 254.4, 14 CFR 259.5(b)(3), 14 CFR 399.84(a), and 49 U.S.C. § 41712, and assessing \$160,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves as a deterrent to Hawaiian and other carriers.

This order is issued under the authority contained in 14 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Hawaiian Airlines, Inc., violated 14 CFR 254.4 by limiting liability for damages associated with delayed baggage to an amount significantly less than the permitted amount set forth in section 254.4;
3. We find that by engaging in the conduct described in paragraphs 2, above, Hawaiian Airlines, Inc., failed to adhere to its Customer Commitment in violation of 14 CFR 259.5(b)(3);
4. We find that Hawaiian Airlines, Inc., violated 14 CFR 399.84(a) by advertising fares for which a reasonable number of seats were not available and advertising fares that were not available at all;
5. We find that by engaging in the conduct described in ordering paragraphs 2 through 4, above, Hawaiian Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order Hawaiian Airlines, Inc., its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with Hawaiian Airlines, Inc., its successors, its affiliates, and its assigns to cease and desist from further similar violations of 14 CFR 254.4, 14 CFR 259.5(b)(3), 14 CFR 399.84(a), and 49 U.S.C. § 41712;
7. We assess Hawaiian Airlines, Inc., \$160,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 5, above. Of this total penalty amount, \$80,000 shall be due and payable within thirty (30) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$80,000 shall become due and payable immediately if, within one year of the date of issuance of this order, Hawaiian Airlines, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Hawaiian Airlines, Inc., may be subject to additional enforcement action for violation of this order; and
8. We order Hawaiian Airlines, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Hawaiian 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:

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