



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

Issued by the Department of Transportation
On the Twenty-Eighth day of February

US Airways, Inc.

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

Docket: OST 2008-0031

Served: February 28, 2008

CONSENT ORDER

This consent order concerns the display of inaccurate and misleading information on the US Airways website regarding fares for infants traveling on a parent's lap ("lap infants"). The inaccurate display of fare information constitutes an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712 and violates the full-fare advertising requirements of 14 CFR 399.84. This order directs the carrier to cease and desist from similar conduct in the future and assesses a compromise civil penalty of \$100,000 under 49 U.S.C. § 46301.

During a period beginning in mid-2006, soon after the merger of US Airways and America West, consumers attempting to book reservations for lap infants on international flights understood from the carrier's website that infants could travel at no charge. When consumers who had booked reservations on the USAirways website arrived at the terminal, however, the carrier's ticket agents informed passengers that there were in fact charges for lap infants that typically included ten percent of the adult fare, taxes and surcharges and that the display of a "zero charge" on the web fare calculator was erroneous.

US Airways advises that it became aware in the fall of 2006 of the erroneous display of international lap infant fares and sought to modify the site to provide an accurate fare calculator, but, according to the carrier, in view of other website priorities, the modification will not be fully installed until later this year. Initially, the concern on the part of the carrier was to provide a unified website, combining features of both the America West and the US Airways sites, but difficulties in integrating the two systems led to errors such as the one involving lap infant fares. In the interim, the carrier inserted a mandatory screen alerting consumers to the fact that additional charges applied to the transport of infants, including taxes and a fee of approximately 10 percent of the fare of the accompanying adult. The notice, however, did not advise consumers that the full fuel surcharge, equal to that charged adult passengers, applied to lap infants, nor was it clear whether a fee applied to the issuance of a paper ticket required of lap infants. A second

interim fix was put in place in early 2007 which gave the fare of the adult passenger, then noted that the infant fare was “to be determined,” in addition to the mandatory page noted above. Later, the carrier states that it stopped accepting international reservations on its website for lap infants and their accompanying adults. The current page instructs consumers to make such reservations by contacting the carrier’s telephone reservations network.

The display of inaccurate fare information is a violation of the specific requirements of 14 CFR 399.84 and is an unfair and deceptive trade practice and unfair method of competition proscribed by 49 U.S.C. § 41712. A number of consumers chose to book flights with the carrier on the erroneous understanding, based on the website’s representations, that infants would fly without charge. As a result, it is possible that consumers did not avail themselves of more favorable fare offerings on other carriers when transportation was priced for both the child and the accompanying adults. Consumer harm was therefore likely.

Moreover, US Airways’ interim solutions failed to provide sufficient notice of charges applicable to lap infants. Initially, the carrier had in place a series of pop-ups that alerted consumers, after viewing the zero charge on the billing page, that added charges did in fact apply to lap infants. However, reportedly the pop-ups were often blocked by internet browsers or screen filters. Subsequently, the mandatory notice page, put in place in December 2006, failed to state the full extent of infant charges, even though the fare calculator provided an exact adult fare. Only in April 2007, after it became clear to the carrier that a fully functional fare calculator for lap infant fares would not be available until 2008, did it decide to remove all booking and reservations information regarding infant fares and refer all consumers to its telephone reservations center. The carrier informed the Enforcement Office that it has received numerous complaints from consumers on this matter and several hundred tickets for lap infants were sold over the website during the period in question.

In mitigation, the carrier states that it believed in good faith that despite the non-functioning fare calculator, a pop-up window that existed during 2006, advising that fees and charges may be imposed, would adequately advise customers that there would be charges associated with lap infant travel. Further, the carrier states that as soon as it realized that it was receiving a number of complaints about lap infant fares in the fall of 2006, it researched all the persons who held lap infant reservations for future flights (approximately 574 persons) and assigned experienced agents to telephone each such passenger to advise him or her of the specific lap infant charges associated with their reservations and offer refunds to parents for their own fares if they did not want to continue with their travel reservations.

Also, according to the carrier, by early December 2006 the mandatory page was in place on the website advising all customers that assorted charges could be applicable to lap infant travel, and the fare calculator had been amended to reflect that the lap infant fare was “to be determined.” The carrier states that it reasonably believed at that time that the website no longer inadvertently suggested to any persons booking lap infant fares online that there would be no lap infant charges. When the carrier learned in the spring of 2007 that some customers were still confused about lap infant fares booked through the

website, the carrier promptly disabled the public's ability to make lap infant reservations online.

We believe that enforcement action is warranted with respect to US Airways' inaccurate display of infant fares. The carrier's delays in remedying flaws in its website displays resulted in consumers receiving misleading information over an extended period. Until it terminated all displays relating to infant fares in April 2007, some consumers continued to receive inaccurate advice, resulting in inconvenience to consumers and possible additional costs to passengers who based their ticket purchase decisions on the apparently free transportation offered for infants.

US Airways, 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 14 CFR 399.84 and 49 U.S.C. § 41712 in its advertising practices and to an assessment of \$100,000 in compromise of potential civil penalties. This assessment is subject to a credit offset of up to the full amount of the penalty for funds the carrier pays to consumers who purchased tickets for lap infants based on the incomplete information provided on the carrier's website.¹ 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, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by US Airways, as well as by other vendors 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 US Airways, Inc., violated 49 U.S.C. § 41712 by providing information on its website from which reasonable consumers could conclude that there would be no charge for the transportation of lap infants traveling with adults on international flights, and then assessing fees for those infants when passengers arrived at the airport terminal;
3. We find that US Airways, Inc., violated 14 CFR 399.84 by its dissemination of erroneous fare information as described in paragraph 2;

¹ US Airways advises that it has recently entered into a settlement of class action litigation relating to the sale of lap infant tickets over its website. Payments to consumers, but not to their attorneys, made in connection with this settlement will qualify for the offset described here, as will other payments to passengers who purchased such transportation between June 2006 and April 2007. According to information supplied by the carrier, it has remitted all taxes (amounting to more than \$34,000) relating to the air transportation of lap infants at issue here to the appropriate government authorities. These tax payments are in addition to the approximately \$85,000 paid into the trust fund for the direct benefit of consumers in the class action litigation.

4. US Airways, Inc., 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. US Airways, Inc., is assessed \$100,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, subject to an offset of up to the full amount for any funds actually paid by the carrier to reimburse consumers who purchased tickets for lap infants through the carrier's website during the period between June 2006 and April 2007;

6. US Airways, Inc., shall provide the Office of Aviation Enforcement and Proceedings a full accounting of all disbursements pursuant to paragraph 5 above within 15 days following the conclusion of the 15-month period following the service date of this order; the accuracy of these accounting statements shall be attested under penalty of perjury by an appropriate official of US Airways, Inc.;

7. To the extent that U.S. Airways, Inc., has disbursed less than \$100,000 for consumer reimbursements at the conclusion of the 15-month period following the service date of this order, the balance shall be remitted pursuant to the instructions in paragraph 8 below within 30 days of the conclusion of the indicated 15-month period; and

8. Any payment required to be made pursuant to paragraphs 5 and 7 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 US Airways, Inc., 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:

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Deputy General Counsel

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