



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

Issued by the Department of Transportation
on the 18th day of January, 2007

Air Canada

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

Docket OST 2007-26781

Served January 18, 2007

CONSENT ORDER

This consent order concerns certain fare displays on Air Canada's U.S. website (www.aircanada.com) and certain displays of Air Canada fares on Travelocity.com, a major travel vendor and agent of Air Canada, that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. These fare displays, in addition, constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Based on these violations, the order assesses a compromise civil penalty of \$10,000 and directs the carrier to cease and desist from future similar violations.

To ensure that consumers receive accurate and complete information on available air fares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents, in this instance Travelocity.com, state the full price to be charged the consumer. Under its enforcement case precedent, the Department has allowed certain government-imposed taxes and fees to be stated separately in fare advertisements provided that the consumer is informed clearly and conspicuously of these charges.¹ However, carrier-imposed fees and charges, such as fuel surcharges, must be included in the advertised fare.

The Air Canada website violated these Department requirements by displaying fares in certain sixth freedom connecting markets which did not include a fuel surcharge and which listed additional taxes and fees inappropriately.² Over an extended period, the website displayed fares in these markets on initial screens that gave a base fare excluding

¹ Fees or charges may be listed separately provided that they are levied by a government entity on a per-passenger basis, are not *ad valorem* in nature, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. See *Soci t  Air France*, Order 2005-7-3, and cases cited therein.

² Sixth freedom service refers to a carrier's service which carries traffic between points in two foreign countries via the carrier's home country.

the carrier's fuel surcharge and then, as a separate figure, gave the total amount of surcharges and taxes but gave no breakdown of the composition of these additional charges. In subsequent screens, after a consumer selected an itinerary and flights, the website gave complete information regarding taxes and fees but only in the context of a final booking summary.

These discrepancies on the Air Canada site were discovered in the course of a broader investigation of a flexible date search feature on Travelocity.com, a prominent Internet vendor of travel services. The Department discussed this investigation fully in Order 2006-10-4 and we refer to that order for a more complete description of the Travelocity.com search feature at issue and the enforcement action taken against the vendor with respect to this feature. Air Canada, through its agency relationship with Travelocity.com, was jointly responsible for the defective displays on the latter's site.

In mitigation, Air Canada points out that its U.S.-Canada services at all time were held out in a manner consistent with U.S. regulations. Air Canada notes that the incorrect holding out of so-called "sixth freedom" services was entirely inadvertent and that the fares at issue were not offered on a through, single flight number basis, but were connecting flights built automatically by Air Canada's internal system. Air Canada states that it corrected the system flaw as soon as it was brought to its attention. Air Canada further states that the sixth freedom services at issue represent a *de minimis* proportion of its traffic, and that no consumer complaints were received in response to these displays. Indeed, Air Canada notes that its website is highly transparent in its fare displays and gives air travelers unusually detailed information about their travel options. The carrier also points out that it promptly removed its fares from the Travelocity.com search feature at issue here after being contacted by the Enforcement Office regarding its concerns with the site.

We acknowledge the full cooperation of Air Canada in our investigation, its prompt corrective action, and the fact that the defective fare displays were limited to a small percentage of the carrier's U.S. sales. However, we believe that enforcement action is warranted in view of the duration and wide dissemination of these deficient fare quotations. Air Canada, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees (1) to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, including failing to monitor the display of its fares on the websites of its sales agents to ensure that these sites, as much as the Air Canada home site, comply with section 399.84, and (2) to an assessment of \$10,000 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below and the other half will be forgiven if there are no violations of this order over the next year. Air Canada is advised that it will continue to be held accountable in the future for advertisements of its fares appearing on the websites of its agents. The compromise civil penalty assessment, reflecting the technical defects in the Air Canada home website, 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 Air Canada, 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 Air Canada violated 14 CFR 399.84 by advertising certain sixth freedom fares on its Internet site without proper disclosure of additional fees and taxes, and by failing to include a separate fuel surcharge in certain fares displayed on its website, as described above;
3. We find that Air Canada violated 14 CFR 399.84 by allowing non-compliant displays of Air Canada fares to be displayed by its agent Travelocity on the Travelocity.com Flexible Fare Finder search path over an extended period, as described above;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Air Canada has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. Air Canada, its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
6. Air Canada is assessed \$10,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, and, to the extent that it relates to ordering paragraph 2, ordering paragraph 4. Of this total penalty amount, \$5,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$5,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Air Canada violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case, the entire unpaid portion of the \$10,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action; and
7. 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 Air Canada 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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