



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

Issued by the Department of Transportation
On the 23rd day of December 2008

Spirit Airlines, Inc.

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

Docket OST 2008-0031

Served December 23, 2008

CONSENT ORDER

This consent order concerns fare displays by Spirit Airlines, Inc. (Spirit) on its website (www.Spirit.com) that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. The carrier's website failed to include certain carrier-imposed fees in the advertised "base fare" in violation of 14 CFR 399.84. These advertising practices, in addition, constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Based on these violations, this order assesses a compromise civil penalty of \$40,000 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 state the full price to be charged the consumer. These requirements extend to advertisements on Internet sites. Under its enforcement case precedent, the Department has allowed certain taxes and fees described below to be stated separately in fare advertisements, provided that the consumer is informed of these charges in conveniently accessible text. However, carrier imposed fees must be included in the advertised fare.

Fees or charges may be listed separately, under Department precedent, provided that they are 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. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. On Internet displays, these charges may be noted through a prominent link, placed adjacent to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.¹

¹ (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, *Grand Circle Corporation*, Order 2006-7-23, and *AHI Travel International Corp.*, Order 2008-3-5 and orders cited therein, and the

The Spirit website violated 14 CFR 399.84 and 49 U.S.C. § 41712 by displaying fares which did not include certain carrier-imposed fees in the advertised "base fare." Two of the fees in question were collected for seven days in June, 2008 and were denoted as a "Natural Occurrence Interruption Fee" (\$2.50), and an "International Service Recovery Fee" (\$8.50) and appeared at the bottom of screen displays after text setting out government taxes and fees. For a thirty day period, air fares advertised on the Spirit website were also subject to a "Passenger Usage Fee" (\$7.90), later renamed a "convenience fee," (\$5.00), which the carrier assessed on all tickets not purchased at an airport ticket counter. The carrier, in response to the inquiries of the Office of Aviation Enforcement and Proceedings discontinued these charges.

In mitigation, Spirit states that it is committed to fully complying with the Department's policies and rules with respect to full fare disclosure. Specifically, during the period in question Spirit was working on its website to ensure the site met the requirements of both the U.S. and foreign governments for flights originating in the various countries to which it operates. Spirit states that it put great effort into meeting all governmental requirements including where foreign requirements conflicted with those of the U.S.

With respect to the Passenger Usage Fee, Spirit noted the convenience fee could be avoided by purchasing a ticket at the airport and therefore believed the fee was similar to a baggage fee which can be disclosed separately. In addition, Spirit noted that another carrier had disclosed a similar charge on its website for approximately two years and, accordingly, Spirit believed the separate listing of such a convenience fee complied with Department rules. With respect to the other fees, Spirit pointed out that once its new management team understood the scope of the rule, they discontinued these fees immediately. According to the carrier, the fees were charged for only seven days and Spirit has fully cooperated with the Department to ensure it remains in compliance with Department rules, guidance and precedent, and that customers have accurate and complete information on the cost of a ticket before making a purchase.

We acknowledge that Spirit has cooperated in our investigation; however, we believe that enforcement action is nonetheless warranted in this instance. Spirit, for its part, 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 and to an assessment of \$40,000 in compromise of potential civil penalties. Of this total penalty amount, \$20,000 shall be due and payable in four equal \$5,000 installments, the first payment due and payable on January 9, 2009 and subsequent equal installments due on April 9, 2009, July 9, 2009, and October 9, 2009. Up to \$10,000 of the last two of those payments may be offset by June 9, 2009, for verified refunds paid to customers for convenience fees and/or additional fees charged to customers in violation of 14 CFR 399.84 and 49 U.S.C. § 41712, as described above. Spirit shall submit a sworn statement by a responsible airline official, detailing its

notice entitled, "Disclosure of Additional Fees, Charges and Restrictions on Airfares in Advertisements, Including 'Free' Airfares," which is dated September 4, 2003, as well as guidance letters to the industry which can be found at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>).

expenses for which it claims an offset. Thereafter, the Office of Aviation Enforcement and Proceedings will notify Spirit of the allowable offset. The remaining \$20,000 shall be paid if Spirit violates this order's cease and desist provisions during the 12 months following the service date of this order, and Spirit may be subject to further enforcement action. 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 Spirit, 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 Spirit Airlines, Inc., violated 14 CFR 399.84 by failing to include the fees in question in certain advertised fares, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Spirit Airlines, Inc. has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Spirit Airlines, Inc., 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;
5. Spirit Airlines, Inc., is assessed \$40,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$20,000 shall be due and payable in four equal \$5,000 installments, the first payment due and payable on January 9, 2009 and subsequent equal installments due on April 9, 2009, July 9, 2009, and October 9, 2009. Up to \$10,000 of the last two of those payments may be offset for verified refunds paid to customers for convenience fees and/or additional fees charged to customers in violation of paragraph two and three, as described above. Spirit Airlines Inc. shall submit a sworn statement by a responsible airline official, detailing its expenses for which it claims an offset by June 9, 2009. Thereafter, the Office of Aviation Enforcement and Proceedings will notify Spirit Airlines, Inc. of the allowable offset. The remaining \$20,000 shall be paid if Spirit Airlines, Inc. violates this order's cease and desist provisions during the 12 months following the service date of this order, and Spirit Airlines, Inc. may be subject to further enforcement action; and
6. Payments 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 Spirit Airlines, 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:

ROSALIND A. KNAPP
Deputy General Counsel

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