



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

**Issued by the Department of Transportation
on the 25th day of August, 2009**

United Air Lines, Inc.

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

Docket OST 2009-0001

Served August 25, 2009

CONSENT ORDER

This consent order concerns Internet advertisements by United Air Lines, Inc., (United) that violate the full fare advertisement requirements specified in 14 CFR Part 399 and are considered to violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. This order directs United to cease and desist from future violations, and assesses the carrier a compromise civil penalty of \$75,000.

United, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84 of those rules, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. Under long-standing enforcement case precedent, the Department permits taxes and fees, such as passenger facility charges and departure taxes, that are collected by carriers and other sellers of air transportation to be stated separately in advertisements, so long as the charges are levied or approved 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 so that consumers can determine the full fare to be paid. In addition, carriers have long been on notice that they may advertise each-way fares that are available only when bought for roundtrip travel only so long as the disclosure of the roundtrip purchase requirement in the advertisement is clear and conspicuous, i.e., prominent and proximate to the advertised fares.¹ The Department has concluded that advertisements that fail to

¹ Letter from Office of Aviation Enforcement and Proceedings to U.S. and Foreign Air Carriers, March 9, 1995 (<http://airconsumer.ost.dot.gov/rules/19950309.htm>).

properly disclose a roundtrip purchase requirement do not comply with section 399.84 and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.²

For a period of time, United advertised a number of fares on the “Special Deals” section of its website that did not contain appropriate notice of the amount or nature of additional taxes and fees that were excluded from the advertised fare at the *first* point in which the fares were displayed. Nor did United provide clear and conspicuous notice that the fares advertised required a roundtrip purchase. Instead, these fares were followed by a double asterisk that referred the reader to fine print below the group of advertised fares that stated “Each way fares based on required roundtrip purchase, plus taxes/fees.” By failing to provide appropriate notice of the taxes and fees applicable to these fares and the roundtrip purchase requirement associated with the fares, United violated 14 CFR Part 399.84 and engaged in an unfair or deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, United states that it is strongly committed to promoting its fares and services in a clear and readily comprehensible manner, and that it has cooperated fully with the Department in this matter. United further states that in all cases only appropriately separated fees were excluded from the fares, and such fees were clearly explained one click away from the advertisement through a fare “details” link in combination with other details surrounding the fares. Although United disagrees that its original advertisement was not sufficiently clear, it nevertheless voluntarily and immediately altered its additional fees link to stand alone with no separate details relating to the fares, and further enhanced its disclosures to include multiple additional notations of the roundtrip requirement on the advertisement page in order to fully address the Department’s concerns.

The Enforcement Office has carefully considered the information provided by United Air Lines, Inc., but continues to believe that enforcement action is warranted. The Department views compliance with Part 399 seriously. The Enforcement Office and United Air Lines, Inc., have reached a settlement of this matter in order to avoid litigation. Without admitting any violation, United Air Lines, Inc., consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and Part 399 of the Department’s regulations, and to the assessment of \$75,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department’s advertising requirements by United Air Lines, Inc., as well as by other air carriers and foreign air carriers.

² See, e.g., *Martinair Holland, N.V., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 1999-6-16; *America West Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399*, Order 2003-7-39; *Aer Lingus Limited, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2004-5-9; *ATA Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2005-10-11.

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 United Air Lines, Inc., violated 14 CFR 399.84 by causing to be published air fare advertisements that failed to state the entire price to be paid by the consumer at the *first* point at which the fare is displayed;
3. We find that United Air Lines, Inc., violated 14 CFR 399.84 by causing to be published each-way air fares that were available only when bought for roundtrip travel without clear and conspicuous disclosure of the roundtrip purchase requirement in the advertisement;
4. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2 and 3, above, United Air Lines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
5. We order United Air Lines, Inc., and all other entities owned or controlled by or under common ownership with United Air Lines, Inc., and their successors and assignees, to cease and desist from violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
6. We assess United Air Lines, Inc., a compromise civil penalty of \$75,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above. Of this total penalty amount, \$37,500 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$37,500 shall become due and payable if United Air Lines, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and United Air Lines, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject United Air Lines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
7. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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

(SEAL)

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