



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

Issued by the Department of Transportation
On the day of 24th of September, 2010

**MN Airlines, LLC d/b/a
Sun Country Airlines**

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

Docket OST 2010-0005

Served September 24, 2010

CONSENT ORDER

This consent order concerns Internet advertisements by MN Airlines, LLC d/b/a Sun Country Airlines (Sun Country) that violate the advertising requirements specified in 14 CFR Part 399, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Sun Country to cease and desist from future violations of Part 399 and Section 41712, and assesses the carrier a compromise civil penalty of \$40,000.

Applicable Law

As an air carrier, Sun Country is subject to the advertising requirements of Part 399 of the Department's rules. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, 14 CFR 399.84 requires that advertisements specifying airfares state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from the base fare in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisement where a fare is presented. Thus, fare advertisements that fail to identify the existence and amount of separate additional taxes and fees or include only general

statements regarding the existence of such taxes or fees, do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.¹

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of the fees that may be stated separately are shown. In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Furthermore, when advertising a fare, a carrier must have a reasonable number of seats available at that fare for the period during which the fare is being offered. Failure to have a reasonable number of seats available at the advertised fare violates 399.84 and constitutes an unfair and deceptive trade practice under 49 U.S.C. § 41712.³

Facts and Conclusions

A recent review of Sun Country's website by the Office of Aviation Enforcement and Proceedings (Enforcement Office) disclosed instances where Sun County failed to comply with the Department's full-fare advertising rule and case precedent. Sun Country's homepage contained an advertisement with the following statement: "Fall Fare Sale [with fares starting] from \$89* one-way... ." Although an asterisk appeared after the stated fare of \$89, there was no language regarding taxes and fees on the page on which the asterisk appeared, nor was there a hyperlink proximate to the fare that took a consumer to a separate screen where the full amount of taxes and fees were disclosed. Rather, once the consumer clicked on the link on the advertisement, he or she was taken to a landing page where "Fall Fare Sale" destinations appeared and the nature and exact amount of the taxes and fees were disclosed in fine print at the bottom. Thus, consumers were not notified of the existence and amount of additional taxes and fees applicable to the Fall Fare Sale until after they arrived at the landing page and scrolled down to the

¹ See, e.g., *Air Jamaica, Ltd.*, *Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-12-25 (December 30, 2008).

² For example, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges, and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

³ See, e.g., *AirTran Airways, Inc.*, Order 2010-5-29 (Issued May 29, 2010); *American Trans Air, Inc.*, Order 97-12-1 (Issued December 1, 1997); *Continental Airlines, Inc.*, Order 93-10-49 (Issued October 29, 1993).

bottom. Sun Country's failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Further, Sun Country's advertisement on its homepage listed three cities (Palm Springs, New York City, and Phoenix) as destination cities directly below the language stating "Fall Fare Sale from \$89*." However, there were no fares available to any of those three cities for \$89. Rather, the lowest available fares to those destinations were either \$129 or \$99. Advertising fares "from \$89" to the three cities listed on the homepage when, in fact, an \$89 fare was not available to those cities violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation, Sun Country states that the subject non-compliant advertising ran for a short period of time, and only on the Sun Country Airlines website. The carrier further states that the website posting was created by a new employee who failed to get the normal clearances from management before posting. The carrier asserts that it has since reemphasized its review procedures for all advertising content, and has provided those more formal procedures in written form to all involved employees.

Decision

The Enforcement Office has carefully considered the information provided by MN Airlines, LLC d/b/a Sun Country Airlines and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and MN Airlines, LLC d/b/a Sun Country Airlines have reached a settlement of this matter in order to avoid litigation. This settlement was reached in the ordinary course of business and pursuant to applicable law. Without admitting or denying the violations described above, MN Airlines, LLC d/b/a Sun Country Airlines consents to the issuance of this order to cease and desist from future violation of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$40,000 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 a strong deterrent against future noncompliance with the Department's advertising requirements.

This order is issued under the authority in 49 CFR 1.57a and 14 CFR 385.15.

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 MN Airlines, LLC d/b/a Sun Country Airlines violated 14 CFR 399.84 by advertising fares that failed to provide proper notice of taxes and fees that legally may be stated separately from the fare and by advertising fares to destinations at a price when fares at those prices were not available;
3. We find that engaging in the conduct described in paragraph 2 above, MN Airlines, LLC d/b/a Sun Country Airlines engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order MN Airlines, LLC d/b/a Sun Country Airlines and all other entities owned or controlled by, or under common ownership and control with MN Airlines, LLC d/b/a Sun Country Airlines their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject MN Airlines, LLC d/b/a Sun Country Airlines and their successors and assignees to further enforcement action;
5. MN Airlines, LLC d/b/a Sun Country Airlines is assessed \$40,000 in 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 in three installments. The first payment of \$7,000 shall be due and payable within 30 days of the date of issuance of this consent order. The second payment of \$6,500 is due and payable within 60 days of the date of issuance of this consent order. The third payment of \$6,500 is due and payable within 90 days of the date of issuance of this consent order. The remaining \$20,000 shall become due and payable immediately if MN Airlines, LLC d/b/a Sun Country Airlines violates this order's cease and desist or payment provisions during the 12 months following the service date of this order, and MN Airlines, LLC d/b/a Sun Country Airlines also may be subject to further enforcement action for failure to comply with this order; 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 transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject MN Airlines, LLC d/b/a Sun Country Airlines to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and to 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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Assistant General Counsel for
Aviation Enforcement and Proceedings

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