



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

Issued by the Department of Transportation
On the Twenty-First day of June, 2011

China Airlines, Ltd.

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

Docket OST 2011-0003

Served June 21, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by China Airlines, Ltd., (China Airlines) that violate the advertising requirements specified in 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs China Airlines to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$80,000.

Applicable Law

As a foreign air carrier, China Airlines is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertising specifying airfares must 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 base fares 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 advertisements where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, or 2)

include only general statements regarding the existence of such taxes and 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 pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Finally, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify this fee as the "September 11th Security Fee" in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. This office considers the failure of a carrier or ticket agent to identify the September 11th Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.³

Facts and Conclusions

For a period of time, China Airlines' web page displayed advertisements that did not provide any information on additional taxes and fees, including the September 11th

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). On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective October 24, 2011, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

² For example, under current policies, 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 a pop-up or a 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., *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12 (Jan. 16, 2003).

Security Fee. Therefore consumers did not learn of the full fare amount until just prior to purchasing the fare. China Airlines' failure to provide proper notice of taxes and fees that may properly be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation, China Airlines states that it in no way intended to mislead consumers (and is aware of no complaints from, or actual harm to, consumers) using the flexible date search function on its website. China Airlines asserts that during the time period under review, consumers using its website were always presented with clear displays of full fare amounts prior to making a final decision to purchase any air transportation.

In addition, China Airlines points out that it has cooperated fully with the Office of Aviation Enforcement and Proceedings (Enforcement Office) in an effort to resolve this matter. China Airlines states that upon receiving an initial inquiry from the Enforcement Office it promptly made changes to its flexible date search fare displays to address the Department's concerns. In fact, according to China Airlines, prior to receiving the Enforcement Office's inquiry, it was already in the midst of reviewing and modifying its website, and was thus able to adopt the required changes quickly based on that preexisting effort.

Moreover, as a result of the Enforcement Office's investigation, China Airlines states that it has implemented internal measures to ensure that all new website advertisements will be approved prior to posting and all advertisements that reach the U.S. public will be audited on a regular basis for compliance with the Department's full fare advertising requirements.

Decision

The Enforcement Office has carefully considered the information provided by China 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 China Airlines have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, China Airlines consents 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 the assessment of \$80,000 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 China Airlines, Ltd., violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, and by not identifying in its Internet advertisements the September 11th Security Fee, as required by 49 CFR 1510.7, China Airlines, Ltd., also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order China Airlines, Ltd., and all other entities owned or controlled by, or under common ownership and control with China Airlines, Ltd., its 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 China Airlines, Ltd., and its successors and assignees to further enforcement action;
5. We assess China Airlines, Ltd., \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$40,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$40,000 shall become due and payable immediately if China Airlines, Ltd., violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
6. We order China Airlines, Ltd., to remit the payment ordered in paragraph 5 above, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject China Airlines, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to additional 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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