



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

**Issued by the Department of Transportation
On the Twenty-Sixth day of October, 2011**

LAN Airlines, S.A.

Docket OST 2011-0003

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

Served October 26, 2011

CONSENT ORDER

This consent order concerns violations by LAN Airlines, S.A., (LAN) a foreign air carrier, of the full fare advertising requirements specified in 14 CFR 399.84 and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs LAN to cease and desist from future violations of section 399.84 and section 41712 and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

As a foreign air carrier, LAN is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising 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.¹ Thus, for example, fare

¹ 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 January 24, 2012, airlines and ticket agents must include all

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. § 41712.²

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. The link must directly take the viewer 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.³

Facts and Conclusions

For a period of time in 2011, LAN employed a program on its website that allowed consumers to search for flights by exact dates or by flexible dates. In responding to searches using either method, LAN provided air fare quotes, either through a fare listing or a fare matrix. The quotes, which represented the first time fares were presented to consumers, noted that the fares did not include taxes and fees, but LAN failed to disclose at that time the nature and amount of those taxes and fees in any of the acceptable ways described above. LAN'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.

Mitigation

In mitigation, LAN states that it is strongly committed to complying with all Department rules and regulations. LAN states that a format change to its website resulted in an unintentional change in the manner in which fare conditions were displayed. LAN asserts that it continues its long-standing dedication to the fair treatment of all its customers. According to LAN, its website was developed to provide customers and the public in general a transparent, user-friendly site with current information related to

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 See, e.g., *Cayman Airways, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-3-5 (March 18, 2011).

³ 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>.

LAN, to offer support 24 hours a day, seven days a week, and to provide continuous access to LAN's latest fares and promotions.

LAN further states that it cooperated fully with the Department during the investigation of this matter and took immediate action to correct the discrepancies. The carrier also asserts that it took additional steps (e.g, reviewed its website implementation processes, established additional internal audits by different company divisions, and reinforced its yearly trainings to personnel) to ensure continued compliance with the Department's rules, as well as other applicable regulations affecting advertising in the United States.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by LAN Airlines, S.A., but continues to believe that enforcement action is warranted. The Enforcement Office and LAN Airlines, S.A., have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, LAN Airlines, S.A., 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 \$50,000 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 LAN Airlines, S.A., 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, LAN Airlines, S.A., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order LAN Airlines, S.A., and all other entities owned or controlled by, or under common ownership and control with LAN Airlines, S.A., their successors and assignees, to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject LAN Airlines, S.A., and its successors and assignees to further enforcement action;

5. We assess LAN Airlines, S.A., \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$25,000 shall be due and payable in two equal installments of \$12,500. The first installment of \$12,500 shall be due and payable within 15 days of the date of issuance of this order. The second installment of \$12,500 shall be due and payable within 45 days of the date of issuance of this order. The remaining \$25,000 shall be due and payable immediately if LAN Airlines, S.A., violates this order's cease and desist or payment provisions within one year of the issuance of this order; and
6. We order LAN Airlines, S.A., to remit the payments 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 LAN Airlines S.A., 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:

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Deputy General Counsel

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