



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

Issued by the Department of Transportation
on the 8th day of March, 2010

US Airways, Inc.

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

Docket OST 2010-0005

Served March 8, 2010

CONSENT ORDER

This consent order concerns Internet advertisements by US Airways Inc., (US Airways) that violate the full fare advertisement requirements specified in 14 CFR Part 399 as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. This order directs US Airways to cease and desist from future violations of Part 399 and Section 41712, and assesses the carrier a compromise civil penalty of \$40,000.

As an air carrier, US Airways 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 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 at the *first* point a fare is disclosed to the consumers so that consumers can determine the full fare to be paid.

In Internet advertising displays, the full fare may be stated on the first screen that provides fare quotes in response to a consumer inquiry, or the base fare may be displayed so long as the existence of permissible separately-stated additional charges is prominently disclosed with a clearly presented hyperlink to take the consumer directly to a page showing the nature and amounts of those charges. A search path on a website that requires consumers, after viewing fare quotes displayed in response to their inquiry, to go to a subsequent booking page to find the full-fare violates section 399.84 and Department case precedent.¹

For a short period of time, on US Airways' Internet website, when consumers initiated searches for one-way airfares sorted by schedule, US Airways presented them with a set of fares corresponding to their search parameters that did not include additional taxes and fees. However, US Airways did not provide consumers any notice on that page that additional taxes and fees would be applicable to these airfares. By failing to provide any notice of the existence, nature and amount of the taxes and fees applicable to these fares at the first point the fare was disclosed to consumers, US Airways violated 14 CFR 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, US Airways 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. US Airways further states that its failure to include the additional taxes and fees applicable to one-way airfares sorted by schedule for this short period was wholly unintentional and the result of an inadvertent programming error. U.S. Airways asserts that the extent of consumers impacted by the inadvertent error was limited to a small percentage of the total searches conducted at the US Airways website. US Airways points out that, although the taxes and fees were inadvertently omitted from the initial fare display, all applicable taxes and fees were included in the total price disclosed to consumers before payment was required, and as such, US Airways believes that no consumer purchased a ticket without full knowledge of the total price before the entry of a credit card number. Upon learning of the inadvertent programming error, US Airways took immediate and extensive action to correct the matter.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by US Airways, but continues to believe that enforcement action is warranted. The Enforcement Office and US Airways have reached a settlement of this matter in order to avoid litigation. US Airways, without admitting any violation, 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 \$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 an adequate

¹ See, e.g., *In the Matter of Hobbit Travel, Inc.*, OST Docket 2003-15034, Order 2003-6-16 (Issued June 10, 2003, by Administrative Law Judge Burton S. Kolko).

deterrence to future noncompliance with the Department's advertising requirements by US Airways, as well as by other air carriers and foreign air carriers.

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 US Airways, 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 was displayed;
4. We find that by violating 14 CFR 399.84 as described in ordering paragraph 2, above, US Airways, 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 US Airways, Inc., and all other entities owned or controlled by or under common ownership with US Airways, 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 US Airways, Inc., a compromise civil penalty of \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. This amount shall be due and payable within fifteen (15) days of the date of the issuance of this order. Failure to pay the penalty as ordered shall also subject US Airways, 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

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