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Order 2001-11- 12



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

**Issued by the Department of Transportation  
on the twenty-seventh day of November, 2001**

**Alaska Airlines, Incorporated**

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

**Served November 27, 2001**

**CONSENT ORDER**

This consent order concerns advertisements by Alaska Airlines, Inc., ("Alaska"), that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs Alaska to cease and desist from future violations and to pay compromise civil penalties.

Alaska, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to be an unfair or deceptive practice 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 or ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, including passenger facility charges, imposed or approved by a government on a per-passenger basis, so long as their amounts appear or are stated in the advertisement. (See, *e.g.*, Order 97-11-14). Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised fare, lest consumers be seriously confused about the total amount that must be paid.

Between November 12 and 14, 2000, Alaska published advertisements in several newspapers offering "Year-End Clearance" and "Holiday" fares between Los Angeles and the San Francisco Bay area and seven destinations, including Vancouver, British Columbia, that failed to meet the requirements of Part 399. The advertisements in question listed the seven destinations and two types of fares were quoted next to each one. The "each way" "Clearance" fare to Vancouver was listed as \$89, or \$178 roundtrip. The advertisements contained no notice that there were any applicable taxes or fees that would be added when the tickets were purchased. When, however, passengers attempted to purchase the special fare to Vancouver, they were told that the fare was actually \$191.61 because the advertised fare did not include all of the applicable fees and charges. The advertisements at issue were published in *The Los Angeles Times*, *The San Francisco Examiner/Chronicle* and *The San Jose Mercury News*. As published, the Alaska advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Alaska asserts that its policy has always been to provide complete and accurate information in advertising and to comply fully with all applicable laws and regulations. Alaska also explains that, in this instance, it made an error in the base fares that it filed with the Airline Tariff Publishing Company (ATPCO), which in turn communicates these fares to Alaska's reservations computer, which is hosted in Sabre. It was that error, according to the carrier, that resulted in the publication of the erroneous advertised fares, even though the carrier's intent was always accurately to inform potential passengers of the entire fare that would have to be paid. Once Alaska learned that its advertised fares did not properly include all the applicable taxes and fees, the carrier took concrete steps to correct the matter immediately. To this end, the carrier promptly amended the fare filing to reduce it to the lower advertised fares. In addition, it notified its Rate Desk and its reservations agents to ensure that no further erroneous fare quotes would be generated. Alaska further points out that it is the carrier's policy that any time an Alaska reservations agent generates a fare quote that differs from an advertised fare, and a customer brings this fact to the agent's attention, the agent is given the authority to override the fare listed in Sabre and to honor that advertised fare. Because of this policy, and the promptness with which Alaska took self-corrective measures, particularly the carrier's decision to reduce its filed fares to the lower advertised fares, Alaska contends, any consumer harm caused by the advertisements at issue here was limited.

Alaska states moreover that it takes seriously its responsibilities under the Department's fare advertising regulations and policies. To this end, Alaska has implemented internal controls to prevent any further similar errors in the future. Alaska reports that its Marketing Department has been instructed to run a fare quotation on Sabre before authorizing the publication of fare advertisements in order to ensure that the generated quotation matches the advertised fare in every respect.

The Enforcement Office has carefully considered all of the information provided by Alaska and the corrective measures it has adapted, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Alaska have reached a settlement of this matter. Alaska consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$15,000 in compromise of potential civil penalties. Of this total penalty amount, \$7,500 shall be due and payable within 15 days of the issuance of this order. The remaining \$7,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Alaska violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$15,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Alaska, as well as by other airlines, travel agents, and other sellers of air transportation.

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 Alaska Airlines, Inc. violated 14 CFR 399.84 by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the carrier for certain air transportation;
  3. We find that by engaging in the conduct and violations described in paragraph 2 above, Alaska Airlines, Inc. also violated 49 U.S.C. § 41712;
  4. Alaska Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with, Alaska Airlines, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
  5. Alaska Airlines, Inc. is assessed \$15,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$7,500 shall be due and payable within 15 days of the issuance of this order. The remaining \$7,500
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shall be suspended for one year following issuance of this order, and then forgiven, unless Alaska violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$15,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Alaska Airlines, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment 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 transfer shall be executed in accordance with the instructions contained in the Attachment to 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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