



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

Issued by the Department of Transportation
On the Second day of June, 2011

US Airways, Inc.

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

Docket OST 2011-0003

Served June 2, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by US Airways, Inc., (US Airways) 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. 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 \$45,000.

Applicable Law

As an air carrier, US Airways is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertisements 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 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 advertisements where a fare is presented so that

consumers can immediately determine the full fare to be paid. 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 taxes and fees that properly may be stated separately are shown. In Internet advertising displays, such taxes and fees 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 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

Facts and Conclusions

For a period of time in early 2011, US Airways' homepage displayed an advertisement stating "Rome, sweet Rome from \$659 roundtrip." An asterisk appeared following the fare as well as a second asterisk below the fare next to the statement "Add'l taxes/fees may apply," without further elaboration. Nowhere on the advertisement itself or elsewhere on the homepage on which the advertisement appeared were the nature and amount of the additional taxes stated.³ While the reference to taxes and fees being additional was a hyperlink, it did not take the reader directly to an explanation of those additional charges.

By failing to provide adequate notice of taxes and fees that were not included in its advertised fares as described above, US Airways violated 14 CFR 399.84 and engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

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 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 The homepage displayed other similar advertisements that followed the same format vis-à-vis disclosure of taxes and fees.

Mitigation

In mitigation, US Airways disputes any violation of the Department's fare advertising rules. US Airways asserts that its advertisement included a sufficiently prominent display of taxes and fees. In this regard, the carrier points out that the advertisement stated "Rome, sweet Rome from \$659 roundtrip*" with a statement immediately under it that said "*Addt'l taxes/fees apply." Under long-standing enforcement case precedent, an air carrier may disclose taxes and fees through a prominent link which takes the consumer directly to a separate screen where the nature and amount of taxes and fees are prominently and immediately displayed. US Airways points out that in this case, with a single click on the advertisement, consumers could see a landing page with a box of sample fares, followed by a description of taxes and fees after scrolling to the bottom of the page. According to US Airways, if the carrier created any consumer confusion, it was inadvertent on US Airways' part. US Airways further states that it immediately revised its web site (within 24 hours) to address the Department's concerns, and has fully cooperated with the Department in this matter.

Decision

The Department views compliance with the airline consumer protection requirements very seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by US Airways and continues to believe that enforcement action is warranted. In particular, we wish to emphasize that, in permitting Internet fare advertisers to disclose through a hyperlink the taxes and fees that may properly be stated separately from the advertised fare, the Department always has required that the hyperlink take the reader *directly* to the place on the linked screen (or pop-up) where the required tax and fee disclosures are made. The Department has made clear that it does consumers seeking information on taxes and fees or the full fare they will be charged little good to have to be taken to a place on a webpage that requires the consumer to search through a screen or to have to scroll down through a screen for that important information.⁴ The Enforcement Office and US Airways have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, US Airways 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, as well as to the assessment of \$45,000 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.

⁴ See e.g., *Delta Air Lines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2010-5-30 (May 28, 2010)*.

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 US Airways, Inc., 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 paragraph 2 above, US Airways, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order US Airways, Inc., and all other entities owned or controlled by, or under common ownership and control with US Airways, Inc., 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 US Airways, Inc., and its successors and assignees to further enforcement action;
5. We assess US Airways, Inc., \$45,000 in compromise of civil penalties that might otherwise be assessed for the violations described above, which amount is due and payable within 30 days of the date of issuance of this order; and
6. We order US Airways, Inc., to remit the payment ordered in paragraph 6 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 US Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible 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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