



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

Issued by the Department of Transportation
On the Eighteenth day of August, 2011

Ethiopian Airlines Enterprise

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

Docket OST 2011-0003

Served August 18, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Ethiopian Airlines Enterprise (Ethiopian Airlines) that violated the advertising requirements specified in 14 CFR Part 399, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Ethiopian Airlines to cease and desist from future violations of Part 399 and section 41712, and assesses the carrier a compromise civil penalty of \$50,000.

Applicable Law

As a foreign air carrier, Ethiopian Airlines 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. Thus, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees, 2) include only general statements regarding the

existence of such taxes or fees, or 3) separately state carrier-imposed fees, such as fuel or insurance surcharges, do not comply with section 399.84 or the Department's enforcement case precedent.¹ Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.²

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 additional charges that properly may be stated separately from the advertised fares are disclosed. With respect to Internet fare listings, such additional charges 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 to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.³

Additionally, 49 CFR Part 1510 specifies 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 required to identify this fee *verbatim* as the "September 11th Security Fee" in all advertisements and solicitations that do not include the fee in the advertised base fare. The failure of a carrier to identify the September 11th Security Fee as required by the rule constitutes a separate and distinct violation of 49 U.S.C. § 41712.⁴

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 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., *Continental Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-6-1 (June 2, 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>.

⁴ See, e.g., *Sceptre Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2010-6-23 (June 28, 2010).

Facts and Conclusions

For a period of time in 2011, consumers searching Ethiopian Airlines' website for round-trip flights from a point in the United States to a point outside the United States using one of two alternative booking paths provided on the website, labeled "Search by fare," were not provided with the entire price to be paid at the first point a fare was displayed. Rather, the fare Ethiopian Airlines initially displayed was subject to "additional taxes/fees" and the webpage displaying such fare did not provide any information describing these additional taxes and fees, including identifying the September 11th Security Fee, nor was this information presented to consumers in one of the acceptable alternative methods described above. Therefore, consumers did not learn of the full fare amount until just prior to purchasing the fare. Additionally, Ethiopian Airlines failed to include a significant carrier-imposed fuel surcharge in the advertised fare when it first was displayed, further misleading consumers with an artificially low initially advertised fare.

Ethiopian Airlines' failure to provide proper notice to consumers of the nature and amount of separately stated taxes and fees in any of the acceptable ways described above and its failure to include fuel surcharges in the initially advertised fare violated 14 CFR 399.84 and 49 U.S.C. § 41712. Furthermore, Ethiopian Airlines' failure to label the "September 11th Security Fee" *verbatim* as described above violated 49 U.S.C. § 41712.

Mitigation

In mitigation, Ethiopian Airlines maintains that it takes its obligations under the Department's full fare advertising rule very seriously with the determination to provide the general public full, fair and transparent information to assist its customers objectively on Ethiopian Airlines' pricing policies. According to Ethiopian Airlines, its actions were inadvertent, unintentional and mostly through oversight, and the violations were not committed deliberately in an attempt to conceal or mislead its customers or to violate any of the Department's rules and regulations. Furthermore, Ethiopian Airlines points out that its total online sales generated by the activities at issue amounted to only 1.9 percent of its total sales volume in the United States.

When the Office of Aviation Enforcement and Proceedings (Enforcement Office) advised Ethiopian Airlines of its concerns with pricing information displayed on Ethiopian Airlines' website, Ethiopian Airlines states it took immediate remedial action to bring its website into compliance with the Department's rules, regulations and statutory authority. Ethiopian Airlines also states that it has cooperated completely and promptly with the Department in amicably resolving this matter and has also taken steps internally by instituting checks and balances in its controls so as to better monitor and oversee its advertising practices and, therefore, better ensure Ethiopian Airlines' adherence to the Department's directives, policies and regulations at all times.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Ethiopian Airlines and continues to believe that enforcement action is warranted. The Enforcement Office and Ethiopian Airlines have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Ethiopian 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 \$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 Ethiopian Airlines Enterprise 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, Ethiopian Airlines Enterprise also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Ethiopian Airlines Enterprise and all other entities owned or controlled by, or under common ownership and control with Ethiopian Airlines Enterprise, 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 Ethiopian Airlines Enterprise and its successors and assignees to further enforcement action;
5. We assess Ethiopian Airlines Enterprise a civil penalty of \$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 within 30 days of the date of the issuance of this order. The unpaid portion of the assessed civil penalty shall be due and payable immediately if Ethiopian Airlines Enterprise violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and

6. We order Ethiopian Airlines Enterprise 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 Ethiopian Airlines Enterprise 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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