



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

Issued by the Department of Transportation
on the 18th day of March, 1997

Served March 18, 1997

America West Airlines, Inc.

Violations of 49 U.S.C. § 41712
and 14 CFR Part 399

CONSENT ORDER

This consent order concerns advertisements by America West Airlines, Inc. (America West) for air fares that failed to disclose the full price to be paid for the advertised transportation and were not available as stated. These advertisements did not comply with the full-fare advertising requirements of the Department's regulations (14 CFR Part 399). The failure to do so constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs America West to cease and desist from future violations and to pay a compromise civil penalty.

Under 14 CFR 399.84, any advertising by an air carrier 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 for such air transportation.

In an advertisement it placed in the August 22, 1996, edition of *USA Today*, America West promoted a \$93 one-way fare from Chicago, Illinois, to Washington, D.C. However, when America West sales representatives were contacted by telephone about the air fare, they stated that the actual price of the ticket was \$102. By publishing a fare that was not available, America West violated section 399.84—our full-fare advertising rule—and engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In addition, in the September 25, 1996, edition of the *Seattle Post-Intelligencer*, America West promoted a holiday sale. The ad stated that the fares were valid "either day or night." However, the fine print of the ad limited travel from "8:50 p.m. thru 2:59 a.m. every day beginning 11/23/96 with all travel to be completed by 1/8/97." The ad also stated that, except on 15 dates during that time period, travel would be valid from 3:00 a.m. through 8:49 p.m.

These restrictions on travel are contrary to the ad's explicit claim of fares being valid "either day or night." Accordingly, the advertisement was, on its face, misleading to the public. Therefore, this ad also violates 14 CFR 399.84, the Department's full fare advertising rule, and constitutes an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, America West states that in both cases, it discovered the error on its own and without the intervention of the Department. According to America West, the August 22 ad including the \$93 fare was an inadvertent error that was immediately corrected when it became known. For 48 hours after the ad was run, America West honored the erroneous fare for any customer who demonstrated reliance on the error by producing a copy of the mistaken ad at one of the carrier's airport ticket counters.¹ The carrier asserts that the fares included in the September 25 ad were available at some time on every day during the sale period. After consumer calls to the America West reservation center indicated some confusion over the language "either day or night," the company removed that language before the next running of the ad. Finally, America West states that it did not intend to mislead the public in either advertisement, and that the airline has instituted new internal guidelines to reduce further the chance that a violation of the full-fare advertising rules might occur again.

In order to avoid litigation and without admitting or denying the alleged violations described above, America West has reached a settlement of this matter with the Enforcement Office. Under this order, America West consents to cease and desist from future violations of section 399.84 and 49 U.S.C. § 41712 and to the assessment of a \$20,000 civil penalty in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. The Enforcement Office believes that the assessment of a civil penalty of \$20,000 in this instance is warranted in light of the nature and extent of the deficiencies in America West's advertisements. This order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the Department's advertising requirements.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

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 America West Airlines, Inc. violated 14 CFR 399.84 by advertising a fare that failed to state the full price to be paid and by causing to be published an advertisement that stated that the advertised fares were available either day or night when, in fact, such was not the case;

¹ Although the Enforcement Office believes the steps taken by the carrier mitigated some of the harm, it does not consider the corrective action adequate to obviate the need for enforcement action. For example, the corrective action would have been considered adequate here if the carrier had also made the \$93 fare available through travel agents and by telephone, to all passengers who stated that they were aware that a fare lower than \$102 was advertised or might be available, and had offered that relief for at least 72 hours.

3. We find that by engaging in the conduct described in paragraph 2, above, America West Airlines, Inc. engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. America West Airlines, Inc. and all other entities owned or controlled by or under common ownership with America West Airlines, Inc., and their successors and assignees, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. America West Airlines, Inc. is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above, which shall be paid within 15 days of the date of issuance of 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 attached instructions. Failure to pay the penalty as ordered shall also subject America West 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.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)