



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

Issued by the Department of Transportation
on the 5th day of August, 1997

Served August 5, 1997

Carnival Air Lines, Inc.

Violations of 49 U.S.C. § 41712,
14 CFR Part 399, and Order 96-8-11

CONSENT ORDER

This consent order concerns advertisements by Carnival Air Lines, Inc. (Carnival) that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399), and Order 96-8-11. This order directs Carnival to cease and desist from future violations and to pay compromise civil penalties.

Carnival, 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 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. On May 9-21, 1997, Carnival published advertisements in the *Washington Post* and other newspapers that promoted a "Now's the Time to Fly Carnival Air" campaign, offering air fares to various destinations including Florida, Nassau and San Juan, Puerto Rico,¹ but failed to meet the requirements of Part 399.

¹ In cooperation with the Department's investigation, Carnival disclosed that ads similar to those in the *Washington Post* on May 9, 14, and 19, appeared in: the *New York*

During its investigation of this matter, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) staff learned that the advertised fares were for each way travel that required purchase of a round-trip ticket. The body of the ads did not state prominently and in close proximity to the advertised fares that the stated fare is an each-way fare requiring a round-trip purchase. The round-trip purchase requirement was noted only at the beginning of the small print at the bottom of the ads.

The Enforcement Office has as a matter of enforcement policy permitted the listing in price advertisements of fares on an each-way basis, provided that any round-trip purchase condition is conspicuous and clear, that is, prominently displayed in close proximity to the advertised fare. To be "prominently displayed" the language must also be set in a type size sufficient to alert the reader to the provision (*i.e.*, larger than the fine print usually found at the bottom of ads). See, *e.g.*, Order 93-3-24. The Carnival ads at issue here, while mentioning the round-trip purchase condition, failed to disclose that condition prominently or in close proximity to the advertised fare. As published, the advertisements violate section 399.84 of the Department's regulations. Any violation of 14 CFR 399.84 also constitutes a violation of 49 U.S.C. § 41712.

This is not the first time that Carnival has violated section 399.84. We resolved a previous violation by means of a Consent Order—Order 96-8-11—issued on August 8, 1996.² Under the consent order, Carnival agreed to an assessed civil penalty of \$10,000. Of that penalty amount, Carnival paid \$5,000 in August 1996. The remaining \$5,000 was suspended for one year from the date of the order's issuance and was to be forgiven under the order's terms if Carnival did not violate the order's cease and desist provisions during that year. Thereafter, on February 11, 1997, the Enforcement Office wrote to Carnival stating that the carrier violated the cease and desist provisions of Order 96-8-11 and 14 CFR 399.84 when it published advertisements on the Internet that failed to list applicable passenger facility charges (PFC's). Carnival paid the remaining \$5,000 civil penalty on February 20, 1997.³ At the time, the Enforcement Office deferred action with that payment and a warning that enforcement action would be undertaken should another violation take place. In light of the facts described

Times on May 11 and 13; *Long Island Newsday* on May 9, 14, and 19; the *Hartford Courant* on May 12, 14, 19 and 21; the *Newark Star Ledger* on May 9, 11, 14, and 21; the *Orange County Register* on May 9, 12, 14, and 19; and the *Fort Lauderdale Sun Sentinel* on May 9, 14 and 21.

² In 1996, the Enforcement Office wrote to Carnival about its failure to bring its advertising into compliance with section 399.84, the Department's full-fare advertising rule, as well as its failure to list properly the restrictions applicable to the fares the carrier advertised.

³ Carnival explained at the time that the violation was inadvertent.

above, Carnival is again subject to enforcement action for violating the Department's full-fare advertising regulations and Order 96-8-11.

In mitigation, Carnival states that shortly before the May 1997 advertising campaign was initiated, it had placed its advertising account in the hands of a new agency. Carnival had come to rely on the prior agency's assuring that Carnival's newspaper ads met applicable DOT regulations and Enforcement Office policies. By force of habit, Carnival placed the same level of reliance on the new agency; unfortunately that reliance was misplaced. Carnival stresses that immediately upon becoming aware of the problem, it "pulled" as many of the ads as possible and assured that the new advertising agency made revisions prior to any further publication. Carnival further asserts that in any event, consumers may be most accustomed to finding all disclosures at the end of air carriers' ads, and therefore may be more likely to appreciate round trip purchase requirements and other equally important conditions and thus to be fully informed, if all disclosures are presented collectively in the usual place rather than being unbundled and dispersed elsewhere in the text. Finally, Carnival states that it is and always has been the company's policy to comply fully with the Department's regulations and enforcement policies, irrespective of whether Carnival is in full agreement with those regulations and policies.

The Enforcement Office has carefully considered the information provided by Carnival but continues to believe that enforcement action is warranted. In particular, the Enforcement Office disagrees with Carnival's assertion that consumers are likely to be better informed if essential conditions, such as the "each way" notice, are contained only in the small print at the end of an advertisement.⁴ Nevertheless, the Enforcement Office and Carnival have reached a settlement of this matter. Carnival consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712, 14 CFR 399.84, and Order 96-8-11, and to the assessment of \$30,000 in compromise of potential civil penalties. Of the total penalty amount, \$15,000 shall be due within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Carnival violates this order's cease and desist provisions within that one-year period, or fails to

⁴ Indeed, during the many years this enforcement policy has been in place, the information available to us supports the contrary, that is, that consumers have become accustomed to seeing round trip purchase conditions disclosed conspicuously and clearly, in prominent type and in proximity to the advertised fare, and would not search for such a condition in the small print at the end of an advertisement.

comply with this order's payment provisions, in which case the unpaid portion of the \$30,000 penalty amount 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 Carnival, 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 Carnival Air Lines, Inc. violated 14 CFR 399.84 by causing to be published advertisements that failed to state the entire price to be paid by the customer to the air carrier, or agent, for certain air transportation;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Carnival Air Lines, Inc. also violated 49 U.S.C. § 41712;
4. We find that by engaging in the conduct and violations described in paragraphs 2 and 3 above, Carnival Air Lines, Inc. also violated the cease and desist provisions of Order 96-8-11;
5. Carnival Air Lines, Inc., and all other entities owned or controlled by, or any other air carrier under common ownership with, Carnival Air Lines, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712, 14 CFR 399.84, and Order 96-8-11;
6. Carnival Air Lines, Inc. is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2, 3 and 4 of this order. Of the total penalty amount, \$15,000 shall be due within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless, within that one-year period, Carnival violates this order's cease and desist provisions, or fails to comply with this order's payment provisions, in which case the unpaid portion of the \$30,000 penalty amount shall become due and payable immediately.

Failure to pay the compromise assessment as ordered will subject Carnival 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

7. 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

(SEAL)