



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

Issued by the Department of Transportation
on the 16th day of June 1999

Martinair Holland, N.V.

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

Served June 16, 1999

CONSENT ORDER

This consent order concerns an advertisement of Martinair Holland, N.V. (Martinair), that did not comply with the full-fare advertising requirements of section 399.84 of the Department's regulations (14 CFR 399.84), and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. This consent order directs Martinair to cease and desist from future violations and to pay a compromise civil penalty.

In the December 6, 1998, editions of the *Miami Herald* and a number of other Florida newspapers, Martinair published an advertisement announcing fares from Miami to a number of European destinations. A paragraph at the bottom of the list of fares being offered stated that the fares were one-way based on a round trip purchase and that "other fees and restrictions apply. Government fees and taxes additional." No specific amounts were quoted, nor were specific conditions spelled out.

The Department's requirements with regard to fare advertising are set forth in section 399.84 (14 CFR 399.84), the principal Department rule on air carrier fare advertising, and in related industry notices and enforcement orders. Under section 399.84, any advertising or solicitation for air transportation that states a price for such transportation must state the entire price to be paid. In industry letters and enforcement orders over the past several years, we have elaborated on this standard, and have advised carriers of our enforcement policy on such matters as each-way fare quotations and the statement of conditions and

government-imposed fees. The recent Martinair advertisement failed to comply fully with these requirements.

As a matter of enforcement policy, we have permitted the advertisement of each-way fares that are available only when bought for roundtrip travel so long as the disclosure of the roundtrip purchase requirement in the advertisement is clear and conspicuous, i.e., prominent and proximate to the advertised fares. (See March 9, 1995, letter from this Department's Office of Aviation of Enforcement and Proceedings (Enforcement Office) to U.S. and Foreign Air Carriers.) Placing the roundtrip requirement below and outside of the fare box, as occurred in this case, has long been held to be insufficient notice in a newspaper advertisement and is a violation of section 399.84 as well as section 41712. (See Order 93-3-24.)

Furthermore, we require that advertisements disclose significant restrictions, such as advance purchase requirements, capacity controls, minimum-maximum stay requirements, and dates of travel restrictions and black-out dates in fare advertisements. The failure to do so is considered to be a violation of section 41712 and has been the subject of enforcement actions. (See, e.g., December 20, 1994, letter from Secretary Peña to 59 Airline Chief Executives and Order 96-4-47.) Martinair's newspaper advertisement, with its statement that "other fees and restrictions apply," does not meet this requirement.

In addition, government-imposed and -approved taxes and fees collected by carriers, as we have indicated on a number of occasions, may be stated separately in fare advertisements only so long as the charges are levied and collected on a per-passenger basis and their existence and amount are clearly indicated in the advertisement. (See, e.g., December 20, 1994, letter from Secretary Peña and May 1, 1992, letter from the Enforcement Office to U.S. and Foreign Air Carriers.) This policy also covers fees imposed by foreign governments such as foreign departure taxes. (See, e.g., July 14, 1995, letter from the Enforcement Office to U.S. and Foreign Air Carriers and Travel Agency Executives and Order 96-1-32.)¹ General phrases that do not allow consumers to calculate an actual, maximum, or range of fees, such as the phrase "fares not inclusive of taxes and security charges" used by Martinair in the advertisement, do not satisfy our full-price advertising rule.

We consider any advertisements which do not comply with the above requirements to be a violation of both section 41712 and section 399.84, and we have pursued enforcement action against carriers that have failed to comply with these requirements. (See, e.g., Orders 96-6-25, 96-4-47, 96-1-13, 95-11-3, 95-

¹ Fees imposed by government entities on other than a per-passenger basis must be included in the advertised total price to be paid by the consumer and may not be stated separately.

1-39, 93-4-40, 92-10-41, and 92-7-19.) In its recent advertisements, therefore, Martinair violated both section 41712 and section 399.84.

In mitigation, Martinair emphasizes that the advertisements in question had a minimal circulation, appearing in issues of several Florida newspapers for one day only. While not admitting that the advertisements violated Department rules, the carrier states that it has taken steps to ensure against a recurrence by providing for additional scrutiny in the review of future advertisements. The carrier also refers to its good previous compliance record as evidence of its intent to comply fully with the Department's advertising rules in the future.

After carefully considering all the facts in this matter, including Martinair's explanation, we continue to believe that enforcement action is warranted. Martinair, in order to avoid litigation and without admitting or denying the alleged violations, agrees 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 an assessment of \$20,000 in compromise of potential civil penalties, of which \$10,000 shall be paid as described below. The remaining \$10,000 shall be suspended for one year following the service date of this order and shall then be forgiven unless Martinair fails to comply with the provisions of this order, including its cease and desist and payment provisions, during the suspension period, in which case the entire unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. It represents an adequate deterrence to future noncompliance with our advertising regulations and section 41712 by Martinair, as well as by 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 the order as being in the public interest;
2. We find that Martinair Holland, N.V., violated 14 CFR 399.84 by advertising a fare which failed to state all applicable fees and charges, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, and by failing to disclose significant restrictions, Martinair Holland, N.V., engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

4. Martinair Holland, N.V., and all other entities owned or controlled by or under common ownership with Martinair Ltd., 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. Martinair Holland, N.V., is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Payment of \$10,000 of the assessed penalty is due within 15 days after the service date of this order; the remaining \$10,000 shall be suspended for one year following the service date of this order and shall be forgiven unless Martinair fails to comply with the payment provisions of this order or commits other violations of 14 CFR 399.84, or this order, during the year following service of this order, in which case the entire unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately and Martinair may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject Martinair Holland, N.V., to an 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 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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