



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**Issued by the Department of Transportation
on the 24th day of June 1999**

Served June 24, 1999

**Aerovias de Mexico S.A. de
C.V. (AeroMexico)**

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

CONSENT ORDER

This consent order concerns advertisements by Aerovias de Mexico S.A. de C.V. (AeroMexico) that violate 49 U.S.C. 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations. (14 CFR Part 399.) This order directs AeroMexico to cease and desist from future violations and to pay compromise civil penalties.

From November 9, 1998, through December 8, 1998, AeroMexico published advertisements in the *Dallas Morning News* and other newspapers that promoted fares for each-way travel requiring the purchase of a roundtrip ticket for various destinations.¹ The body of the advertisements did not state prominently and in close proximity to the advertised fares that the stated fares were each-way fares requiring a roundtrip purchase. The roundtrip purchase requirement was noted only in small print at the bottom of the advertisements. Also, the advertisements failed to indicate clearly the required amount of taxes and fees. Further, at least in advertisements appearing in the *Dallas Morning News* on November 10, 17, and 29, 1998, AeroMexico stated that fares "must be ticketed on or before 11/30/98," even though the fare from Dallas/Fort Worth to Acapulco had expired on November 15, 1998. As a final matter, the advertisements stated that "last date of travel restrictions may apply." The advertisements failed to disclose, however, other significant restrictions that are required to be described specifically in advertisements, such as those regarding

¹ In cooperation with the Department's investigation, AeroMexico disclosed that advertisements similar to those in the *Dallas Morning News* appeared in numerous newspapers throughout the United States from early November 1998 through early December 1998.

travel dates, minimum and maximum stay requirements, and nonrefundability of tickets.

As a foreign air carrier, AeroMexico 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 that a customer must pay to the air carrier for such air transportation. For advertisements of each-way fares available only on a roundtrip purchase basis, Department precedent requires that the advertisement prominently disclose the roundtrip purchase requirement in the advertisement. "Prominently" means in close proximity to the advertised fare and in a type size sufficient to alert the reader to the provision. (See March 9, 1995, letter from the Office of Aviation Enforcement and Proceedings (Enforcement Office) to U.S. and foreign air carriers.) Printing the roundtrip requirement in fine print below and outside the fare box, as AeroMexico did, is insufficient notice in a newspaper advertisement and is a violation of Section 399.84. (See, e.g., Order 93-3-24.)

As to government-imposed and -approved taxes and fees collected by an airline, such as custom fees, departure taxes, and passenger facility charges (PFCs), carriers have been permitted, as a matter of enforcement policy, to state such taxes and fees separately in fare advertisements so long as the charges are levied and collected on a per-passenger basis and their existence and amount are indicated clearly in the advertisement. (See May 1, 1996, letter from the Enforcement Office to U.S. and foreign air carriers.) This policy also covers fees imposed by a foreign government and collected by an airline or its agents, such as foreign departure taxes. General phrases that preclude consumers from calculating an actual, maximum, or range of fees, such as "taxes and airport fees not included" as used by AeroMexico in its advertisements, do not satisfy our full-price advertising rule.

Additionally, under longstanding Department precedent, significant travel restrictions must be disclosed in the advertisement. Failure to disclose significant travel restrictions, such as capacity controls, nonrefundability requirements, and change-in-itinerary fees, in fare advertisements has been found to be an unfair and deceptive practice and unfair method of competition, in violation of 49 U.S.C. 41712. (See Orders 97-11-14 and 96-4-47.)

In mitigation, AeroMexico states that, in the past, its advertising agency and its officials with advertising responsibilities were insufficiently familiar with the Department's advertising requirements. AeroMexico also offers that any deviations from those requirements were unintentional and that it has taken specific ameliorative steps to assure future compliance.

Further, AeroMexico contends that its disclosure of the roundtrip purchase requirement in the advertisements was clear, and that the size and placement of the

disclosure complied with the Department's requirements, which, according to AeroMexico, are that disclosure be "in close proximity to the advertised fare and in a type size sufficient to alert the reader to the provision." In this regard, AeroMexico asserts that the disclosure was in the box with the fares, separated by a route map, appeared in a font only slightly smaller than that of the fares and, at any rate, was no smaller than in other airline advertisements. Finally, AeroMexico states that even if the advertisements were unclear about other terms and conditions, readers were encouraged to call a travel agent or AeroMexico directly to obtain more information.

The Enforcement Office has carefully considered the information provided by AeroMexico, but continues to believe that, taken as a whole, the advertisements failed to comply with the Department's requirements and were misleading. Enforcement action, therefore, is warranted. In this regard, the Enforcement Office and AeroMexico have reached a settlement of this matter. In order to avoid litigation and without admitting the alleged violations, AeroMexico consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. 41712 and 14 CFR 399.84 and to the assessment of \$25,000 in compromise of potential civil penalties. Of the total penalty amount, \$12,500 shall be paid as described below. The remaining \$12,500 shall be suspended for one year following issuance of this order, and then forgiven, unless AeroMexico violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions. In that case, the unpaid portion of the \$25,000 penalty shall become due immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. In light of all the circumstances, the terms of this order represent an adequate deterrence to future noncompliance with the Department's advertising requirements by AeroMexico as well as by other air carriers and foreign air carriers similarly situated.

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 AeroMexico Airlines has violated 14 CFR 399.84 by publishing deceptive advertisements that failed to comply with the Department's full-fare advertising requirement;
3. We find that by engaging in the conduct and violations described in paragraph 2 above and by failing to describe significant restrictions applicable to the fares advertised, AeroMexico has also violated 49 U.S.C. 41712;
4. AeroMexico, all other entities owned or controlled by AeroMexico, and their successors and assignees are ordered to cease and desist from violations of 49 U.S.C. 41712 and 14 CFR 399.84;

5. AeroMexico is assessed \$25,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Payment of \$12,500 of the assessed penalty shall be made in four equal payments of \$3,125. AeroMexico shall pay the first installment within 30 days of issuance of this order and the three subsequent payments at 3-month intervals thereafter. The remaining \$12,500 shall be suspended for one year following issuance of this order, and then forgiven, unless AeroMexico violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions. In that case, the unpaid portion of the \$25,000 penalty shall become due immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will also subject AeroMexico to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Payments 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 AeroMexico files a timely petition for review or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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