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ORDER 2001-4-19



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

**Issued by the Department of Transportation
on the 13th day of April, 2001**

Vanguard Airlines, Inc.

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

Served April 13, 2001

CONSENT ORDER

This consent order concerns an advertisement by Vanguard Airlines, Inc. ("Vanguard"), that violates 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 Vanguard to cease and desist from future violations and to pay compromise civil penalties.

Vanguard published a fare advertisement in the January 2, 2001, issue of the *Atlanta Journal-Constitution* that begins with the statement "Winter White Sale Now is the Time to Get Away." The body of the ad contains individually listed fares for various cities and beneath each listed fare appears the statement "plus \$10 fuel surcharge."

Under 14 CFR 399.84, any advertising 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 or ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by the government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are stated in the advertisement. Fuel surcharges, however, must be included in the advertised

fare. (See, *e.g.*, Order 95-1-39). As published, the Vanguard advertisement violates section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Vanguard states that it believes the January 2, 2001, advertisement complies with the intent of section 399.84 since the statement "Plus \$10 fuel surcharge" was presented in reasonably sized type just below each fare printed; thus, the complete fare was easily ascertainable by consumers. Moreover, Vanguard states that the Department should take into account the fact that the carrier has changed its pricing policies and no longer imposes any fuel surcharges on any of its tickets. Finally, Vanguard asserts that if this is a violation of the section 399.84, it is an unintentional and isolated violation and that the carrier has always maintained a commitment towards full compliance with the Department's regulations.

The Enforcement Office has carefully considered the information provided by Vanguard but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Vanguard have reached a settlement of this matter. Vanguard 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 \$2,000 in compromise of potential civil penalties. 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 Vanguard, as well as by other airlines, travel agents, and 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 this order as being in the public interest;
2. We find that Vanguard Airlines, Inc., violated 14 CFR 399.84 by causing to be published a fare advertisement that failed to state the entire price to be paid for the advertised air transportation since it listed fuel surcharges separately from the advertised fares;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Vanguard Airlines, Inc., also violated 49 U.S.C. § 41712;
4. Vanguard Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with, Vanguard Airlines, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Vanguard Airlines, Inc., is assessed \$2,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Failure to pay the compromise assessment as ordered will subject Vanguard 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; and

6. Payment shall be made within 15 days of the service date of this order 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)

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