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

Issued by the Department of Transportation  
on the 6<sup>th</sup> day of September, 2001

**Lowestfare.com**

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

Served September 6, 2001 - 215

**CONSENT ORDER**

This consent order concerns advertisements by Lowestfare.com 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 Lowestfare.com to cease and desist from future violations and to pay compromise civil penalties.

On February 20, 2001, Lowestfare.com e-mailed a *Newsletter* to a number of individuals that included an airfare advertisement, the body of which states "Fares do not include \$3-\$12 airport passenger facility charges and segment fees where applicable." The next line in the advertisement states, "International fares do not include taxes, fees and surcharges of up to \$75." Finally, the second paragraph in the disclaimer states, "All prices quoted in the newsletter are per person, based on double occupancy, and do not include port charges, taxes, PFCs, segment taxes or fuel surcharges unless otherwise indicated." These statements were also made in advertisements in the March 13 and March 23, 2001, editions of the *Newsletter*.

In addition, Lowestfare.com also published an advertisement in the March 25, 2001, edition of *The Washington Post* which in the fine print states "International taxes and airport surcharges are not included." No amount for these taxes and surcharges was stated in the advertisement. Similar ads were run in eight different newspapers on four separate dates. Finally, in a recent advertisement on its website, a trip to Honolulu was advertised for \$299. The terms and conditions section of the site contained the statement, "Prices do not include

taxes." The ad failed to list the nature and amount of the taxes not included in the advertised price.<sup>1</sup>

Under 14 CFR 399.84, any advertising by an air carrier or its agent 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 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 non-*ad valorem* 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.) The Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that, as published, the Lowestfare.com advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Lowestfare.com states it had no intention to mislead anyone. In one of the cited instances, the material used by Lowestfare.com was in compliance with guidelines but there was additional duplicative material, which caused the alleged non-compliance. In addition, in several of the instances cited by the Department, the media in which the advertisements were placed did not follow Lowestfare.com's instructions. Furthermore, the company points out, in all of the cases cited by the Department consumers were informed of the full amount of the ticket purchase price during the booking process. To the extent that there were advertisements which would be considered to have violated regulations and policy they were the result of administrative oversights, which, looking at industry advertisements in general, commonly appear.

The Enforcement Office has carefully considered the information provided by Lowestfare.com but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Lowestfare.com have reached a settlement of this matter. Lowestfare.com does not admit or deny the violations alleged and does not admit or deny that it is subject to the provisions of the statute and regulations which it is alleged to have violated, but, solely for purposes of settlement, 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 \$40,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301. Of this total penalty amount, \$20,000 shall be paid in two installments according to the payment schedule stated *infra*. The remaining \$20,000 shall be suspended for one year following the service date of

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<sup>1</sup> Northwest Airlines recently eliminated its payment of commissions for travel agent ticket sales made over the Internet, and, as a result, Lowestfare.com began to assess purchasers of Northwest tickets a \$10 service fee. On its Internet site, Lowestfare.com states, in a prominent manner close to all listed Northwest fares, that an additional service fee applies and must be added to the stated fare and it lists the amount of the service fee and the total price to be paid. We find that this disclosure is adequate and meets the requirements of section 399.84 since the alert regarding the service fee and its amount appears prominently on the first screen that states a price, and a total price, including the service fee, is displayed as prominently as the price less that fee.

this order, and then forgiven, unless Lowestfare.com violates the cease and desist provisions of this order within that one-year period, or fails to comply with its payment provisions, in which case the entire unpaid portion of the \$40,000 penalty shall become due and payable immediately, and the company 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 Lowestfare.com, as well as by 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 Lowestfare.com violated 14 CFR 399.84 by causing to be published fare advertisements that failed to state the entire price to be paid for the advertised air transportation as described above;
3. We find that by engaging in the conduct described in paragraph 2, Lowestfare.com also violated the provisions of 49 U.S.C. § 41712;
4. Lowestfare.com and all other entities owned and controlled by, or under common ownership and control with, Lowestfare.com 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. Lowestfare.com, Inc. is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that penalty amount \$20,000 shall be due and payable in two installments of \$10,000 each, with the first payment due within 15 days of the service date of this order and the second payment due within 6 months from the service date. The remaining \$20,000 shall be suspended for one year following service of this order, and then forgiven, unless Lowestfare.com, Inc. violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$40,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Lowestfare.com, 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. 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 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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on the World Wide Web at  
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