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Order 2002-12-12



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

Issued by the Department of Transportation  
on the 11th day of December, 2002

**Aerolineas Argentinas, S.A.  
Violations of 49 U.S.C. § 41712 and  
14 CFR Part 399**

**Served December 11, 2002**

**OST 2002-12273**

**CONSENT ORDER**

This order concerns a series of newspaper advertisements by Aerolineas Argentinas, S.A., 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 Aerolineas Argentinas to cease and desist from future violations and to pay a compromise civil penalty.

Between July 7 and August 25, 2002, Aerolineas Argentinas published a series of advertisements in the *Miami Herald* promoting its flights from Miami to various cities in South America. All but one of these advertisements listed various coach, business, and promotional fares and included fine print disclaimers that either stated "taxes and surcharges not included" or "airport taxes not included." None quoted a specific amount or range of taxes such that a consumer could actually calculate the full fare to be paid for the proffered air transportation.

Aerolineas Argentinas, as a foreign air carrier, is subject to the advertising requirements of Part 399. 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 by the consumer. However, pursuant to its enforcement case precedent, the Department has allowed taxes and fees collected by air carriers and other sellers of air transportation, such as passenger facility charges and departure taxes, to be stated separately in advertisements, so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated so that consumers can determine the full fare to be paid. Advertisements that include only general statements that do not allow consumers to calculate the full fare to be paid, such as most of those at issue here, do not comply with section 399.84 or enforcement case precedent. Advertisements that do not

comply with the applicable requirements also constitute “unfair or deceptive practices” in violation of 49 U.S.C. § 41712.<sup>1</sup>

In addition, the advertisement published in the July 14, 2002, edition of the *Miami Herald* also quoted what appeared to be a low fare for international air transportation between Miami and several listed Argentinean cities, when, in fact, the fare applied only to domestic air transportation between these cities. Specifically, the advertisement contained a statement inviting consumers to “fly non-stop... to Buenos Aires” and to visit other cities in Argentina “for only \$168.” However, the advertisement contained no language reasonably indicating the actual market to which the fare applied. Furthermore, the advertisement held out “non-stop service 747 [sic] to Buenos Aires” from Miami. In this connection, the Enforcement Office received complaints from consumers who reasonably believed that the advertised fare was a through fare from Miami to the cities listed in the advertisement via Buenos Aires, but were later told by the carrier’s reservations agents that the fare applied only to travel between these cities and that consumers would have to pay an additional fare to travel between Miami and Buenos Aires.

In mitigation, Aerolineas Argentinas states that, at a corporate level, it did not intend to violate the Department’s regulations concerning fare advertising. Rather, Aerolineas Argentinas states that the advertisements at issue here were the product of mid-level employees who were unfamiliar with these regulations. Furthermore, Aerolineas Argentinas states that it will comply with the Department’s advertising requirements in the future.

The Enforcement Office views seriously the obligation of all air carriers to comply with Departmental regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. Accordingly, we have carefully considered all of the available information, including that provided by Aerolineas Argentinas, but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Aerolineas Argentinas have reached a settlement of this matter. Without admitting or denying the violations described above, Aerolineas Argentinas 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 \$15,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$7,500 shall be paid under the terms described below. The remaining \$7,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Aerolineas Argentinas violates this order’s cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Aerolineas Argentinas may be subject to further and more stringent enforcement action. The Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. § 41712 and 14 CFR Part 399.

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<sup>1</sup> The Enforcement Office has pursued enforcement action on these grounds against numerous air carriers, indirect air carriers, and travel agents. *See, e.g.*, Orders 2002-5-30, 2001-4-19, and 99-6-14.

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 Aerolineas Argentinas, S.A., 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;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Aerolineas Argentinas, S.A., also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. We find that Aerolineas Argentinas, S.A., separately violated 49 U.S.C. § 41712 by causing to be published an advertisement that misidentified the market for the advertised fare;
5. Aerolineas Argentinas, S.A., and all other entities owned and controlled by, or under common ownership and control of Aerolineas Argentinas, S.A., 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;
6. Aerolineas Argentinas, S.A., is assessed a civil penalty of \$15,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2, 3, and 4, above. Of the assessed penalty, \$3,750 is due and payable within 30 days of the date of issuance of this order and \$3,750 is due and payable within 90 days of the date of issuance of this order. The remaining \$7,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Aerolineas Argentinas, S.A., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject Aerolineas Argentinas, S.A., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
7. Payment of the civil penalty described above 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 attached instructions.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

**By:**

ROSALIND A. KNAPP  
Deputy General Counsel

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