

Order 2013-6-20



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

**Issued by the Department of
Transportation
On the Twenty-Eighth day of June, 2013**

JetBlue Airways Corporation

**Violations of 14 CFR 259.5(b)(4), 399.84(a), and
49 U.S.C. § 41712**

**Docket OST 2013-0004
Served June 28, 2013**

CONSENT ORDER

This order concerns violations by JetBlue Airways Corporation (JetBlue) of 14 CFR 259.5(b)(4), 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs JetBlue to cease and desist from future similar violations and assesses the carrier \$60,000 in civil penalties.

Applicable Law

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers. Among these rules, 14 CFR 259.5(b)(4) requires airlines to adopt and adhere to a provision in their customer service plans allowing reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made if the reservation is made one week or more prior to a flight's departure ("qualified reservation"). This provision became effective on January 24, 2012. Under this provision, an airline that chooses to comply with the rule by allowing a qualified reservation to be cancelled within 24 hours of

booking¹ must promptly refund the full airfare paid by consumers without assessing any cancellation fees that would otherwise apply under the carrier's cancellation policy.

The Department's amended full-fare advertising rule, 14 CFR 399.84(a), which took effect on January 26, 2012, requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid by the consumer. This rule ensures that consumers are not deceived and are given accurate and complete fare information on which to base their travel purchase decisions. Although charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be displayed as prominently as the full fare, may not be presented in the same or larger font size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

Following the issuance of section 399.84(a), the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) provided guidance to airlines and ticket agents on when they may appropriately advertise an airfare as "free."² Through this guidance and enforcement precedent, the Department has distinguished among fares that are, in fact, free (i.e., those that can be obtained without any monetary cost to consumers) and fares that require monetary payments, such as government-imposed taxes or carrier-imposed charges.³ If a carrier advertises an airfare as "free," the carrier may not assess the consumer any monetary charge when the consumer attempts to obtain the "free" travel. Advertising a fare as "free" when consumers must pay government-imposed taxes and fees or mandatory carrier-imposed charges violates the full-fare advertising rule and constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Facts

To comply with section 259.5, JetBlue adopted a "Passenger Service Plan" and posted the plan on its website. Among other commitments in the plan, JetBlue's plan stated that following the receipt of a payment from a customer, it would allow a reservation to be canceled within 24 hours of booking without a cancellation fee if the reservation was made one week or more prior to the flight's departure. However, an investigation conducted by the Enforcement Office found that between January and November 2012, JetBlue imposed its cancellation fees on a limited number of qualified reservations

¹ A carrier can choose either to hold the reservation free of charge for 24 hours or to allow consumers to cancel the reservation within 24 hours and receive a full refund. A carrier is not required to offer both options. *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)*, issued Aug. 19, 2011; revised Sept. 6, 2011, Oct. 19, 2011, and Jan. 11, 2012.

² *Guidance on the Use of the Term "Free" in Air Fare Advertisements and Disclosure of Consumer Costs in Award Travel*, May 17, 2012.

³ *See, e.g., British Airways Plc, Violations of Articles 17 and 19 of the Montreal Convention, 14 CFR 399.84 and 49 U.S.C. § 41712*, Order 2012-10-1, Oct. 1, 2012.

towards which a full refund should have been issued when the reservations were cancelled.

Further, in November 2012, the Enforcement Office reviewed JetBlue's "Go Pack" Internet promotions and found that the carrier failed to comply with section 399.84(a). The "Go Pack" promotions consisted of seven different packages, each of which included ten booking codes that could each be redeemed for a one-way nonstop flight on a specified route or routes. For each package, JetBlue quoted the price in the format of "total base fare + taxes/fees per flight." For example, the price for the Pittsburgh package was presented as "\$899+ \$7 taxes/fees per flight." For the San Juan package, the price was presented as "\$699 + up to \$69 taxes/fees per flight." The advertising did not state the entire price of the package including taxes and fees that had to be paid to redeem all of the booking codes. Price advertising that states a fare without taxes and fees does not state the entire price to be paid by consumers and, therefore, violates section 399.84(a).

Also between October and November 2012, JetBlue advertised its "Election Protection" sweepstakes on the Internet and through several regional news media networks. Specifically, JetBlue invited consumers to enter the sweepstakes by voting for a presidential candidate, and stated that each winner of the sweepstakes would receive a "free ticket" or a "free flight." Notwithstanding the use of the term "free," JetBlue's "Official Rules" stated that "[p]assenger is solely responsible for all fees, taxes, surcharges, and service charges for all travel booked using a Travel Certificate" and that the government taxes and fees for each way international travel could be up to \$329. Although consumers who won the prizes were not charged airfare, they did have to pay government taxes and fees in order to book tickets. JetBlue's advertisements of "free" airfares when the fares were not indeed "free" to consumers violated section 399.84(a). JetBlue's failure to comply with sections 259.5(b)(4) and 399.84(a) as described above also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, JetBlue believes that it substantially complied with the requirements of its customer service plan and 14 CFR 259.5(b)(4) requiring it to issue refunds without penalty to passengers cancelling reservations within 24 hours of booking and seven days prior to the date of travel. JetBlue states that it identified 118,679 cancellation requests received within 24-hours of a reservation made for travel more than a week in advance that it processed between January and November 2012. JetBlue asserts that it processed 99.925 percent of the cancellation requests in compliance with its customer service plan and the regulations. JetBlue states that of these cancellation requests, it identified only 89 instances where a passenger requested a refund and was erroneously assessed JetBlue's cancellation fee. JetBlue asserts that, after the Enforcement Office's intervention, it investigated each of these instances and learned that 24 had already received refunds. JetBlue further states that it attempted to contact the remaining 65 passengers, reaching and issuing refunds (totaling \$5,700) to 63 of them. Given that the regulation took effect in January 2012, JetBlue submits that these performance figures reflect a diligent and successful effort to implement the refund requirement.

With respect to the full-fare advertising rule, JetBlue states that its Go Pack offer is an innovative, consumer-friendly air travel product, which was sold differently than most air travel. JetBlue believes that the full fare advertising rule as drafted did not consider the possibility of this innovative and consumer friendly offering. Because certain taxes are not assessed until the time of booking and because the taxes vary widely on international routes, JetBlue argues that it could not calculate the total amount of the taxes due until all the booking codes had been used or the time to use them had expired. Accordingly, JetBlue asserts that the best way to calculate the “entire price to be paid by the customer” as required by 14 CFR 399.84(a) was ambiguous. JetBlue submits that the advertising for its Go Pack promotion represented a good faith effort to describe the offer accurately to consumers and JetBlue received no customer complaints with respect to the Go Pack or its marketing.

JetBlue submits that it considered it unfair to consumers to require them to pay the maximum amount of taxes for all potential flights a Go Pack could provide at the time of purchase. Specifically, JetBlue contends that a consumer might choose not to use all 10 booking codes or, with respect to Go Packs covering international routes, might choose to book flights with lower taxes. JetBlue believed that the most accurate way to describe the offer to consumers was to state the package price and provide the maximum amount of the taxes that could be due as each booking code was used. Accordingly, JetBlue asserts that it decided to advertise the base price of the Go Pack while separately but clearly identifying the amount of taxes that would be collected upon each booking. JetBlue asserts that its advertising was a good faith attempt to accurately describe the product to consumers.

With respect to JetBlue’s Election Protection promotion, JetBlue states that it did not derive any direct pecuniary benefit from the advertising campaign. JetBlue submits that the campaign complied with applicable sweepstakes laws and resulted in the award of 1006 roundtrip international travel certificates to consumers. JetBlue confirms that consistent with sweepstakes laws around the country, consumers were not required to provide any monetary consideration to receive their opportunity to win the prize. Although winners did have to pay applicable taxes upon using the awarded travel certificates, JetBlue states that it did not receive a direct financial benefit for providing the transportation.

Decision

The Enforcement Office has carefully considered the information provided by JetBlue, but continues to believe enforcement action is warranted with respect to all three issues discussed above. The Enforcement Office and JetBlue have reached a settlement of this matter in order to avoid litigation. The Enforcement Office considers the violation concerning cancellations fees serious, but notes that the number of violations is small particularly compared to the number of cancellations processed by JetBlue during the relevant time period where it complied with the 24-hour cancellation rule, 14 CFR 259.5(b)(4). JetBlue also quickly provided refunds of the fees improperly charged upon

becoming aware of them. With respect to the “Election Protection” sweepstakes, the Enforcement Office also views this violation to be serious, but notes that JetBlue received no direct financial gain from the advertisements. Based on the foregoing and the other mitigating factors, JetBlue is ordered to cease and desist from those violations in the future but will not be subject to any civil penalty with respect to these two issues. Without admitting or denying the violations described above, JetBlue consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.5(b)(4) and 399.84(a) and 49 U.S.C. § 41712, and to the assessment of \$60,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by JetBlue and other U.S. and foreign air carriers.

This order is issued under the authority contained in 49 CFR Part 1 and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest.
2. We find that JetBlue Airways Corporation violated 14 CFR 259.5(b)(4) by failing to adhere to its customer service commitment with respect to allowing a reservation to be cancelled without penalty within 24 hours of making such a reservation, when the reservation is made one week or more before the flight’s departure.
3. We find that JetBlue Airways Corporation violated 14 CFR 399.84(a) by advertising “Go Pack” multiple-flight packages that did not include applicable taxes and fees.
4. We find that JetBlue Airways Corporation violated 14 CFR 399.84(a) by advertising a “free” ticket or “free” flight when consumers were required to pay applicable taxes and fees.
5. We find that by engaging in the conduct described in ordering paragraphs 2, 3, and 4, above, JetBlue Airways Corporation engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.
6. We order JetBlue Airways Corporation, and all other entities owned or controlled by, or under common ownership and control with JetBlue Airways Corporation, its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 259.5(b) and 399.84(a) and 49 U.S.C. § 41712.
7. We assess JetBlue Airways Corporation \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 3, above. Of this total penalty amount, \$30,000 shall be due and payable within 20 days of the issuance date of this order, and the remaining \$30,000 shall become due and

payable if, within one year of the issuance date of this order, JetBlue Airways Corporation violates the cease and desist provision in ordering paragraph 6, above, or fails to comply with the payment provisions in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately.

8. We order JetBlue Airways Corporation to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject JetBlue Airways to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

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