



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

Issued by the Department of Transportation
on the 4th day of November, 2015

American Airlines, Inc.

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

Served: November 4, 2015

Docket DOT-OST-2015-0002

CONSENT ORDER

This order concerns violations by American Airlines, Inc. (American) of the 24-hour reservation hold rule, 14 CFR § 259.5(b)(4), and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712. This order directs American to cease and desist from future similar violations.

Applicable Law

49 U.S.C. § 41712 prohibits an air carrier, foreign air carrier, or ticket agent from engaging in an unfair or deceptive practice or an unfair method of competition. Specifically, 14 CFR § 259.5(b)(4) requires air carriers 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 ("24-hour reservation hold rule").¹

Under this provision, if an airline chooses to comply with the rule by allowing a reservation to be held for twenty-four hours, the airline must allow the consumer to purchase the ticket at the held fare and cannot cancel the ticket before the expiration of the timeframe. An airline's failure to adhere to this provision constitutes an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

¹ American complies with § 259.5(b)(4) by offering a 24 hour hold option.

Facts

On March 17, 2015, American Airlines experienced a mistaken fare sale situation between the hours of 5:00 pm and 10:00 pm Eastern Daylight Time (“the sale period”).² Due to a technical error, American offered for sale on its U.S. website business class tickets between select U.S. cities and Shanghai or Beijing, China, for a base fare of zero dollars (\$0) or twenty dollars (\$20). The full fare for these mistaken fare tickets, including taxes, fees, and carrier-imposed surcharges, ranged between \$400 and \$800 per ticket. The average full-fare of a business class ticket on American Airlines for the city pairs during the days immediately before and after the sale period ranged between \$4,500 and \$5,000.

During the sale period, 1194 reservations were made through American in total: 589 reservations for 804 passengers were purchased immediately, while 605 reservations for approximately 830 passengers were placed on a 24-hour hold. American honored the 589 tickets that had been fully purchased during the sale period; however, before the expiration of the guaranteed hold period, American canceled the 605 tickets that were on hold.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) received over 100 complaints from consumers alleging that American improperly cancelled tickets prior to the expiration of the guaranteed hold period. American received an additional 11 complaints directly from consumers whose reservations were similarly cancelled.

Analysis

We have reviewed all of the available information, including the information submitted by American Airlines, consumer complaints, and additional information gathered by the Enforcement Office. We conclude that, by cancelling 605 held tickets before the expiration of the guaranteed hold period, American failed to adhere to the assurances in its customer service plan and thereby violated 14 CFR § 259.5(b)(4) and 49 U.S.C. § 41712.

Mitigation

In mitigation, American states that there is compelling evidence that the persons who purchased the mistaken fare tickets and those who put such fares on hold were prompted to do so by social media posts which both publicized the fact that the mistake fares were being offered and made apparent that the fares had been offered by mistake. According to American, there is a clear correlation between social media mentions of the mistake fares and bookings or holds made by consumers of those fares. American found that during the five hour period in which the mistake fares were available, and during which there was an explosion of social media publicizing the fares, more than 1,200 reservations were ticketed or put on hold, while in the five days before fewer than 100 reservations per day were made on the same routes during the same times.

² Mistaken fares are offers by an airline or other seller of air transportation to sell tickets for air transportation for a fare that is usually substantially lower than the intended ticket price for the class of service being sold.

American maintains that the explosion of social media mentions not only prompted significantly more bookings than normal, they also put readers on notice that the fares were published by mistake. American states that in numerous social media contexts, posts were made characterizing the offered fares as a “mistake fare” and urging consumers to purchase them quickly and not take any actions that might alert American to the fact the mistaken fares had been offered.³ In American’s view, social media posts acknowledging or recognizing that the fares were offered by mistake yet urging readers to rush to book them shows an intent to cheat, as many consumers knew the fares were not valid.

American adds that after it cancelled mistake fares put on hold, some of the same consumers who were seeking to take advantage of the mistake urged that others enlist the Department’s assistance to obtain a windfall by urging the filing of complaints with DOT – to the degree that one person who had put a reservation on hold, but admittedly had no intention of actually ticketing it, nonetheless filed a complaint with the Department.

American believes that the proliferation of social media sites publicizing mistake fares has resulted in individuals purchasing mistaken fare tickets in bad faith, and not on the honest belief that a good deal was available. American contends that DOT regulations and guidance should not be used to reward consumers who purchase mistake fares in bad faith. American states its view that the purpose of the regulations in 14 CFR §§ 259.5(b)(4) and 399.88 are not to facilitate a windfall to consumers who purchase or put on hold a fare they know to have been offered by mistake. American agrees with a social media post made regarding the mistake fares that stated “The DOT rules are there to protect the rights of passengers, not the right of people trying to benefit from mistakes.” American welcomes the Department’s enforcement policy noted in footnote four below.

American continues to believe that given the clear correlation between social media postings that prompted consumers to make bookings and holds and alerted those consumers to the fact the fares were offered by mistake, enforcement action is not appropriate, as it rewards persons not acting in good faith.

Decision

We believe that enforcement action is warranted and is in the public interest. The Enforcement Office and American Airlines have reached a settlement in this matter in order to avoid litigation. Without admitting or denying the violations found in this order, American consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR § 259.5(b)(4). Further, American has agreed to compensate the holders of cancelled reservations by offering them either a zero dollar economy class ticket, (plus applicable taxes and fees), or a reduced price business class ticket, for air transportation to China between the

³ Examples of such posts include: “I fully expect these to be cancelled the base fare was \$0...”; “Mistake Fare: Business Class from DC to Beijing for \$450 RT”; “Let’s see if this sticks at all...not getting my hopes up.”; “My first mistake fare, if it clears. I feel so alive inside.”; “ It does look like a mistake fare.”; “DO NOT CALL THE AIRLINE”; “There is a rare Business Class mistake fare available on American Airlines for Flights from Washington DC to Beijing.”; “Clearly this was one of those airline computer system pricing blunders!”; “Just noticed that the base fare was \$0. Damn!!! Will still try.”

same city pairs as the cancelled tickets. Affected passengers have one year to complete the travel. As of the date of this Order, American has tendered the travel offer to all affected passengers. This agreement is in compromise of civil penalties otherwise payable pursuant to 49 U.S.C. § 46301.

This order is appropriate considering the nature and extent of the violations.⁴ It comprises a strong deterrent against future similar violations, and will serve the public interest.

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

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 American Airlines engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 and 14 CFR § 259.5(b)(5) by cancelling 605 tickets before the expiration of the 24 hour hold period;
3. We order American Airlines, and its successors and assignees, to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR § 259.5(b)(4) as described in ordering paragraph 2, above.

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:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at www.regulations.gov.

⁴ On May 8, 2015, the Enforcement Office issued a Notice regarding a new enforcement policy for mistaken fares. The Notice stated that the Enforcement Office would decline to enforce 14 CFR § 399.88, the Department's prohibition on post-purchase price increase, in mistaken fare situations so long as the airline or seller of air transportation: (1) demonstrates that the fare was a mistaken fare; and (2) reimburses all consumers who purchased a mistaken fare ticket for any reasonable, actual, and verifiable out-of-pocket expenses that were made in reliance upon the ticket purchase, in addition to refunding the purchase price of the ticket. The enforcement policy outlined in that notice is temporary and will remain in effect only until the Department issues a final rule that specifically addresses mistaken fares. The enforcement policy only applies to mistaken fare situations under § 399.88 and does not affect an airline's responsibilities under § 259.5(b)(4).