§ 399.82 Passing off of carrier identity by affiliation between carriers.

(a) Applicability. This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) Definition. For the purpose of this statement, the term affiliation, as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

1. Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;
2. Is in control of the other within the meaning of section 408 of the Act;
3. Has any of the interlocking relationships described in section 409 of the Act;
4. Is jointly controlled with the other carrier, directly or indirectly by a third person;
5. Provides general agency services for the other carrier.

For the purpose of this statement, general agency services shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase, lease or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) Minimum safeguards. The minimum safeguards which the Board will consider as adequate to foreclose passing off by affiliated carriers are as follows:

1. An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;
2. Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;
3. All forms of display (including aircraft insignia), scheduled publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier are performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;
4. Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;
5. Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk-space, personnel uniforms, and other facilities and activities;
6. Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the
application form should identify the
carrier performing the transportation;

(7) The respective personnel of the af-
filiated carriers shall preserve the indi-
vidual identity of the respective car-
riers in all public dealings.

(d) Unfair and deceptive practice. It is
the policy of the Board to regard any
joint activity of an affiliated air car-
rrier and a foreign air carrier as an un-
fair or deceptive practice or unfair
method of competition where such
joint activity does not satisfy the min-
imum safeguards enumerated in the
preceding subsection.

(e) Exceptions. Exceptions to a safe-
guard set forth in paragraph (c) of this
section may be recognized for activi-
ties in a foreign country if the Board
finds that special circumstances per-
taining to the country render the safe-
guard inappropriate. Exceptions on
other grounds may be recognized pur-
suant to §399.4.

[PS–29, 30 FR 13781, Oct. 29, 1965]

§ 399.83 Unfair or deceptive practice of
air carrier, foreign air carrier, or
ticket agent in orally confirming to
prospective passenger reserved
space on scheduled flights.

It is the policy of the Board to con-
sider the practice of an air carrier, for-
eign air carrier, or ticket agent, of
stating to a prospective passenger by
telephone or other means of commu-
nication that a reservation of space on
a scheduled flight in air transportation
is confirmed before a passenger has re-
ceived a ticket specifying thereon his
confirmed reserved space, to be an un-
fair or deceptive practice and an unfair
method of competition in air transpor-
tation or the sale thereof within the
meaning of section 411 of the Act, un-
less the tariff of the particular air car-
rrier or foreign air carrier provides for
confirmation of reserved space by the
means so used.

[PS–58, 39 FR 38086, Oct. 29, 1974]

§ 399.84 Price advertising and opt-out
provisions.

(a) The Department considers any ad-
vertising or solicitation by a direct air
carrier, indirect air carrier, an agent of
either, or a ticket agent, for passenger
air transportation, a tour (i.e., a com-
bination of air transportation and
ground or cruise accommodations) or
tour component (e.g., a hotel stay) that
must be purchased with air transpor-
tation that states a price for such air
transportation, tour, or tour compo-
nent to be an unfair and 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
carrier, or agent, for such air transpor-
tation, tour, or tour component. Al-
though charges included within the
single total price listed (e.g., govern-
ment 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 mis-
leading, may not be displayed promi-
nently, may not be presented in the
same or larger size as the total price,
and must provide cost information on a
per passenger basis that accurately re-
fects the cost of the item covered by
the charge.

(b) The Department considers any ad-
vertising by the entities listed in para-
graph (a) of this section of an each-way
airfare that is available only when pur-
chased for round-trip travel to be an
unfair and deceptive practice in viola-
tion of 49 U.S.C. 41712, unless such air-
fare is advertised as “each way” and in
such a manner so that the disclosure of
the round-trip purchase requirement is
clearly and conspicuously noted in the
advertisement and is stated promi-
nently and proximately to the each-
way fare amount. The Department con-
siders it to be an unfair and deceptive
practice to advertise each-way fares
contingent on a round-trip purchase re-
quirement as “one-way” fares, even if
accompanied by prominent and proxi-
mate disclosure of the round trip pur-
chase requirement.

(c) When offering a ticket for pur-
chase by a consumer, for passenger air
transportation or for a tour (i.e., a
combination of air transportation and
ground or cruise accommodations) or
tour component (e.g., a hotel stay) that
must be purchased with air transpor-
tation, a direct air carrier, indirect air
carrier, an agent of either, or a ticket
agent, may not offer additional op-
tional services in connection with air
transportation, a tour, or tour compo-
nent whereby the optional service is
automatically added to the consumer’s