



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

Issued by the Department of Transportation
On the First day of March, 2012

Unister USA, LLC, d/b/a Flights24.com

**Violations of 49 U.S.C. § 41712 and
14 CFR Parts 399 and 257**

**Docket OST 2012-0002
Served March 1, 2012**

CONSENT ORDER

This consent order concerns Internet advertisements by Unister USA, LLC, d/b/a Flights24.com (Unister) that (1) failed to comply with the Department's full-fare advertising requirements as specified in 14 CFR Part 399, and (2) failed to disclose code-share arrangements pursuant to the requirements specified in 14 CFR Part 257 and 49 U.S.C. § 41712(c). These failures constitute separate and distinct unfair and deceptive practices prohibited by section 41712(a). This consent order directs Unister to cease and desist from future violations of Parts 399 and 257 and section 41712 and assesses Unister a compromise civil penalty of \$30,000.

Applicable Law

Unister is a ticket agent¹ that sells air transportation and is therefore subject it to the advertising requirements of Part 399 of the Department's rules and the prohibitions of 49 U.S.C. § 41712 on engaging in unfair and deceptive practices and unfair methods of competition. Pursuant to 14 CFR 399.84, advertisements specifying airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent that expired on January 25, 2012, the Department allowed taxes and fees

¹ A "ticket agent" is "a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation." 49 U.S.C. § 40102(a)(45).

collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements so long as such taxes and fees were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately determine the full fare to be paid. Carrier or ticket agent-imposed charges, such as fuel surcharges and administrative fees, were not permitted to be stated separately from the advertised fare, unless the full price including those charges was prominently displayed in the advertisement. Thus, for example, fare advertisements that 1) failed entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare was displayed, 2) included only general statements regarding the existence of such taxes and fees, or 3) separately stated carrier-imposed fees, other than as described above, did not comply with section 399.84 or the Department's enforcement case precedent.² Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

With respect to Internet fare listings, additional charges that properly could be stated separately from the advertised fare were allowed to be disclosed through a prominent link placed adjacent to the stated fares that noted that taxes and fees were extra. The link was required to directly take the viewer to the bottom of the screen, to a pop-up, or to a place on a separate screen where the nature and amount of taxes and fees were prominently and immediately displayed.³ On the other hand, carrier- or agent-imposed surcharges, e.g., fuel, insurance and service charges or other such costs, always had to be included as described above in the advertised price.

Unister is also subject to the specific code-share requirements found in 49 U.S.C. § 41712(c) and Part 257. Under section 41712(c), ticket agents are required to disclose the name of the operating carrier providing the service for each segment of a passenger's itinerary "on the first display of the Web site following a search of a

² On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which became effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition, as described above, on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

³ For example, under the enforcement policy in effect prior to January 26, 2012, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that took the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees were prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

requested itinerary in a format that is easily visible to a viewer.” Additionally, section 257.4 of the Department’s code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 unless, in conjunction with that holding out or sale, the advertiser follows certain notice requirements, including those of 14 CFR 257.5(d). The specific terms of section 257.5(d) require that print advertisements, including those published on the Internet, “prominently disclose that the advertised service may involve travel on another carrier,” “clearly indicate the nature of the service in reasonably sized type,” and “identify all potential transporting carriers... by corporate name and by any other name under which that service is held out to the public.” Failure to disclose code-share arrangements pursuant to Part 257 and section 41712(c) constitutes an unfair and deceptive practice under section 41712(a).

Facts and Conclusions

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a significant lack of compliance by Unister with the Department’s full-fare advertising rule. From at least July 2011 through October 2011, Unister failed to properly disclose to consumers that additional taxes and fees applied to fares advertised on its Internet website, Flights24.com. Specifically, at the first point at which fares were displayed on its website Unister failed to identify the existence and amount of additional taxes and fees, one of which was Unister’s service fee, which cannot lawfully be broken out from the base fare. Such conduct violated 14 CFR 399.84 and constituted a prohibited unfair and deceptive practice pursuant 49 U.S.C. § 41712(a).

Our investigation also revealed a lack of compliance by Unister with 49 U.S.C. § 41712(c) and section 257.5 of the Department’s code-share disclosure rule. From at least July through September 2011, Unister failed to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated on behalf of a major air carrier by a regional air carrier on its Internet website. Specifically, it did not display the corporate names of the transporting carriers and any other names under which those flights were held out to the public on its flight itinerary pages. Unister’s failure to properly disclose the existence of code-sharing arrangements and the names of the transporting carriers as required by Part 257 and section 41712(c) resulted in consumers having no way of knowing the identity of the airline that would actually operate the aircraft on which they would be flying. Such conduct violated 49 U.S.C. § 41712(c) and Part 257 and constituted a separate and distinct a prohibited unfair and deceptive practice pursuant to 49 U.S.C. § 41712(a).

Mitigation

In mitigation, Unister emphasizes its intention to fully comply with the Department's advertising regulations. Unister states that it is committed to providing accurate information to its customers and that any alleged violation was completely inadvertent. Unister further states that it has never been the subject of a Department enforcement investigation. Unister asserts that it is not aware of any consumer confusion arising from the conduct described in the order. Nonetheless, after Unister was contacted by the

Enforcement Office, it took immediate action to comply with the relevant law and has fully cooperated with the Department.

Unister further asserts that it has spent a significant amount of money overhauling the site's fare and code-share display and expects to incur additional costs to ensure future compliance. Unister states that it remains committed to providing its consumers with accurate and detailed information about the lowest fares throughout the world.

Decision

The Enforcement Office has carefully considered the information provided by Unister and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Unister have reached a settlement in this matter in order to avoid litigation. Without admitting or denying the violations described above, Unister consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 399 and 257 and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's advertising requirements by Unister and other ticket agents and sellers of air transportation.

This order is issued under the authority in 49 CFR 1.57a 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 Unister USA, LLC, d/b/a Flights24.com violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Unister USA, LLC, d/b/a Flights24.com engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);
4. We find that Unister USA, LLC, d/b/a Flights24.com violated 49 U.S.C. § 41712(c) and 14 CFR 257.5(d) by failing to disclose code-sharing arrangements as required;
5. We find that by failing to disclose code-share arrangements as required by 49 U.S.C. § 41712(c) and 14 CFR 257.5(d), Unister USA, LLC, d/b/a Flights24.com engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);

6. We order Unister USA, LLC, d/b/a Flights24.com and all other entities owned or controlled by, or under common ownership and control with Unister USA, LLC, d/b/a Flights24.com their successors, affiliates, and assignees, to cease and desist from further similar violations of 49 U.S.C. §§ 41712(a) and 41712(c), 14 CFR 399.84, and 14 CFR 257.5. Failure to comply with this cease and desist provision shall subject Unister USA, LLC, d/b/a Flights24.com and its successors and assignees to further enforcement action;
7. We assess Unister USA, LLC, d/b/a Flights24.com \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, and 5, above. Of this total amount, \$15,000 will become due and payable in five equal installments of \$3,000. The first installment of \$3,000 is due and payable within 15 days of the issuance date of this order, the second installment of \$3,000 is due and payable on or by May 1, 2012, the third installment of \$3,000 is due and payable on or by August 1, 2012, the fourth installment of \$3,000 is due on or by November 1, 2012, and the fifth installment of \$3,000 is due on or by January 1, 2013. The remaining \$15,000 shall become due and payable if Unister USA, LLC, d/b/a Flights 24.com violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately; and
8. We order Unister USA, LLC, d/b/a Flights24.com to remit the payment assessed in paragraph 7 above by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Unister USA, LLC, Flights24.com to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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