



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

Issued by the Department of Transportation
On the Seventeenth day of October, 2011

Orbitz Worldwide, LLC.

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.84**

Docket OST 2011-0003

Served October 17, 2011

CONSENT ORDER

This consent order concerns Internet advertisements by Orbitz Worldwide, LLC., (Orbitz) that violated the advertising requirements specified in 14 CFR Part 399, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Orbitz to cease and desist from future violations of Part 399 and section 41712, and assesses the company a compromise civil penalty of \$60,000.

Applicable Law

As a ticket agent, Orbitz is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees 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 are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisements where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed, or 2) include only general statements regarding the existence of such taxes and fees do not comply with section 399.84 or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.¹

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of the fees that may be stated separately are shown. In Internet advertising displays, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.²

Finally, when advertising a fare, a seller must have a reasonable number of seats available at that fare for the period during which the fare is being offered.³ Failure to have a reasonable number of seats available at the advertised fare violates 399.84 and constitutes an unfair and deceptive trade practice under 49 U.S.C. § 41712.

¹ See, e.g., *US Airways, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2011-6-2 (June 2, 2011)*; *Delta Air Lines, Inc. Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2010-5-30 (May 28, 2010)*. 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 is effective January 24, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

² For example, under current policies, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "Taxes and Fees" set off as a hyperlink that takes the viewer directly to the bottom of the screen or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are 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>.

³ See, e.g., *AirTran Airways, Inc., Order 2010-5-29 (May 29, 2010)*; *American Trans Air, Inc., Order 97-12-1 (December 1, 1997)*; *Continental Airlines, Inc., Order 93-10-49 (October 29, 1993)*.

Facts and Conclusions

For a period of time in early 2011, Orbitz's homepage displayed advertisements that did not provide any information on additional taxes and fees. Nowhere in the advertisement itself or on the homepage were the nature and amount of the additional taxes stated. Rather, once the consumer clicked on the advertisement, he or she was taken to a landing page where the advertisements were once again displayed followed by fine print at the bottom of the page explaining the nature and exact amounts of fees. Thus, consumers were not notified of the additional taxes and fees applicable to the fare sale until after they arrived at the landing page and scrolled down to the bottom of the page. Orbitz's failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Further, Orbitz advertised on its "Dynamo" pages, the "cheapest most-recent weekend and cheapest most-recent any-time fares found by other Orbitz.com users." These fares were supposed to be updated every twenty-four hours. However, they were not. Rather, consumers who selected a fare from a "Dynamo" page were taken to a landing page where an entirely different fare was displayed. As stated above, advertising a fare that is no longer available or failing to have a reasonable number of seats available at the advertised fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation, Orbitz states that it endeavors to maintain full compliance with the regulations and policies that govern advertising by ticket agents, and that any violations were inadvertent and were promptly corrected. Orbitz asserts that it has a long record of working with the Department to address any concerns that may arise, has fully cooperated with the Department in the course of this investigation, and has reaffirmed its commitment to provide complete and accurate information. In particular, in response to the Department's concerns, Orbitz states that it has revised how disclosures are provided about the nature and amount of taxes that are applicable to a fare to conform with the Department's requirements. In regard to the "Dynamo" pages, Orbitz has corrected the underlying data processing issue that resulted in the listing of fares that previously had been found by users, but not within the time period stated on those pages. Additionally, according to Orbitz, a mitigating factor is the lack of clear and consistent guidance to carriers and ticket agents. In regard to the "Dynamo" pages, Orbitz states that although stale data regrettably was included on those pages, consumers were specifically warned that those pages displayed "found" fares, which might not be available even if the data had been as current as intended – but also might still be available even if the data were not as current as intended. Orbitz argues that the limited guidance that the Department previously has provided regarding fare availability standards does not specifically address the issue of "found" fares, and Orbitz understands that the issue in this case is not that such fares were displayed but that the description of them did not match the actual

displays. But with these factors noted, Orbitz accepts that its practices did not conform with the Department's requirements, and in order to affirm its commitment to the consumer and resolving this matter, Orbitz has agreed to enter into this consent order.

Decision

The Enforcement Office has carefully considered the information provided by Orbitz 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 Orbitz have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Orbitz 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 \$60,000 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.

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 Orbitz Worldwide, LLC., violated 14 CFR 399.84 by failing to state the full price of advertised fares;
3. We find that Orbitz Worldwide, LLC., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712 by violating 14 CFR 399.84 and by failing to have a reasonable number of seats available for sale at the advertised price;
4. We order Orbitz Worldwide, LLC., and all other entities owned or controlled by, or under common ownership and control with Orbitz Worldwide, LLC., its successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Orbitz Worldwide, LLC., and its successors and assignees to further enforcement action;
5. We assess Orbitz Worldwide, LLC., \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described above; and

6. We order Orbitz Worldwide, LLC., to remit the payment ordered in paragraph 5 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 Orbitz Worldwide, LLC., 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

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