



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

Issued by the Department of Transportation
On the Fourteenth day of January, 2014

Airtrade International, Inc., d/b/a Vayama

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

Docket OST 2014-0001

Served January 14, 2014

CONSENT ORDER

This consent order concerns Internet advertisements by Airtrade International, Inc., d/b/a Vayama (Vayama) that violate the Department’s full fare advertising rule, 14 CFR 399.84(a), and constitute a prohibited unfair and deceptive practice under 49 U.S.C. § 41712. The order directs Vayama to cease and desist from future violations of section 399.84 and section 41712, and assesses the company a compromise civil penalty of \$80,000.

Applicable Law

As a ticket agent,¹ Vayama is subject to the advertising requirements of Part 399 of the Department’s rules. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, section 399.84(a) requires that advertisements specifying airfares and air tour package prices state the entire price to be paid by the consumer.² Specifically, any advertisement

¹ A “ticket agent” is defined as “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).

² 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 total price, 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 reflects the cost of the item covered by the charge.

or solicitation for air transportation that displays a price for such transportation must state the entire price to be paid, including all taxes and government fees and all mandatory airline- and ticket agent-imposed fees. A ticket agent may state separately charges included within the total listed price provided that the statement is not false or misleading. Ticket agents who choose to provide supplementary information regarding the existence and amount of taxes, government fees, and carrier-imposed fees should ensure that, if grouped together, they are not described under a general rubric such as “taxes and fees.”³ Otherwise, consumers may not be aware that the total price to be paid includes an agent-imposed fee and may believe that the taxes and government fees associated with their airfare are higher than they actually are. Therefore, ticket agents must clearly indicate that the amount includes both taxes and government fees, and agent-imposed fees. Failure to accurately identify agent-imposed fees constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Additionally, to comply with section 399.84(a), sellers of air transportation must, in all fare displays, state either the exact fare or round up to an amount greater than the exact fare.⁴ The requirement prohibits sellers of air transportation from providing consumers with fare quotes that are lower than the actual amounts, which may be particularly important on websites that display multiple flight options ranked from the lowest to the highest fare. Even slight differences in fare amounts on websites that display rounded-down fare amounts are likely to deceptively induce some consumers to select a flight option that was not the itinerary or carrier he or she would have chosen if provided with more accurate information. We consider the failure to show either the exact fare or to round up to an amount greater than the exact fare to be an unfair and deceptive trade practice and unfair method of competition in violation of 14 CFR 399.84(a) and 49 U.S.C. § 41712.

Facts and Conclusions

For a period of time in 2013, after a consumer selected a fare from a display of fare options, Vayama added its own fee to taxes and displayed the total amount under a general “Taxes and Fees” category on a purchase review screen. This screen would include the “Base Fare” and then an amount labeled as “Taxes and Fees.” The amount would not differentiate what portion of the total consisted of taxes and government fees and what portion was Vayama’s own service charge. Therefore, consumers were unable to determine how much of the total price was attributable to the government and how much was attributable to Vayama. For example, Vayama would list a “Base Fare” for a domestic ticket of \$178.60 and “Taxes and Fees” of \$60.20 for a total fare of \$238.80.

³ *Additional Guidance on Airfare/Air Tour Price Advertisements* (Issued February 21, 2012), available at <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

⁴ *Guidance on the Use of Rounding in Air Fare Advertisements* (Issued February 28, 2012), available at <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

However the actual amount of the taxes and government fees was less than \$60.20 because Vayama had included its service fee of \$25.00 in this amount.⁵

For a period of time in 2012 and 2013, Vayama's homepage advertised fares that were rounded down to the whole dollar below the actual total fare amount. For example, the webpage featured flight deals from various cities, such as Baltimore. Under the "Your flight deals from Baltimore" section, Vayama advertised fares to Moscow. When a consumer clicked the accompanying link, the landing page displayed a fare quotation for \$707. However, a consumer who selected the \$707 fare from Baltimore to Moscow was then taken to a third page, where the full fare, \$707.37, was finally displayed. Compliant agents would have advertised this fare as \$707.37 or rounded the fare up to \$708, for example.

By failing to accurately state the exact fare or round up the advertised fare and failing to accurately distinguish between taxes and government fees and agent-imposed fees, Vayama violated section 399.84(a). Such violations also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Vayama emphasizes that it takes compliance with the Department's consumer regulations very seriously, including the Department's advertising and website display requirements. Concerning the fare rounding issue, Vayama states that it only showed fees rounded down to the nearest dollar amount on initial price quotations. Visitors to Vayama.com who clicked on specific flights would see the fare disclosed with the actual amount of dollars and cents charged for each flight. Vayama states that no one purchased a ticket on Vayama.com without first being shown the full fare, with the amount displayed prominently and with no rounding. In addition, Vayama states that approximately 70% of its bookings came through partners, where the original website displayed the fare rounded up, not down. Vayama estimates that, at most, 30% of its bookings were made where the consumer first saw the fare rounded down. Further, within 24 hours of receiving notice of the Department's investigation, Vayama corrected the site to display fares rounded up to the nearest dollar amount. Regarding its use of a "Taxes and Fees" category on its purchase review screen for Vayama.com, Vayama promptly provided a link with a full description of the relevant taxes and fees after receiving notice from the Department.

Decision

We view compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Vayama and continues to believe that enforcement action is warranted. The Enforcement Office and Vayama have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Vayama consents to the issuance of

⁵ Airtrade International, Inc., charges a service fee of \$25.00 for domestic tickets. International tickets carry a service fee that can range from \$5 to \$50.

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 \$80,000 in compromise of potential civil penalties otherwise assessable 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 airfare advertising requirements.

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

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 Airtrade International, Inc., d/b/a Vayama, violated 14 CFR 399.84(a) by advertising tours including air transportation 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, Airtrade International, Inc., d/b/a Vayama, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We find that Airtrade International, Inc., d/b/a Vayama, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712 by including in its advertising its own fee in the category labeled "taxes and fees;"
5. We order Airtrade International, Inc., d/b/a Vayama, and all other entities owned or controlled by, or under common ownership and control with Airtrade International, Inc., d/b/a Vayama, its successors, affiliates, and assigns, to cease and desist from further similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Airtrade International, Inc., d/b/a Vayama, and their successors and assignees to further enforcement action;
6. Airtrade International, Inc., d/b/a Vayama is assessed \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4, above, \$40,000 of which shall be due and payable within thirty (30) days from the date of issuance of this order. The remaining \$40,000 shall become due and payable immediately if Airtrade International, Inc., d/b/a Vayama violates the cease-and-desist provision of this order within one year following the date of issuance of this order, or fails to comply with the order's payment provisions; and
7. We order Airtrade International, Inc., d/b/a Vayama, to pay the penalty assessed in paragraph 6 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 Airtrade International, Inc., d/b/a Vayama 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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