



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

Issued by the Department of Transportation  
On the 30th day of June, 2011

**LBF Travel, Inc.**

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

**Docket OST 2011-0003**

**Served June 30, 2011**

**CONSENT ORDER**

This consent order concerns Internet advertisements by LBF Travel, Inc., (LBF) that violated the Department's full-fare advertising requirements specified in 14 CFR Part 399, the Department's code-share disclosure rule, 14 CFR Part 257, and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs LBF to cease and desist from future violations of Parts 399 and 257 and section 41712, and assesses LBF a compromise civil penalty of \$30,000.

**Applicable Law**

LBF is a ticket agent<sup>1</sup> 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

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<sup>1</sup> 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).

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 the base fare 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 advertisement where a fare is presented so that consumers can immediately determine the full fare to be paid.<sup>2</sup>

In Internet advertising displays, taxes and fees that may be properly 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 place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.<sup>3</sup> Thus, fare advertisements that separately state *ad valorem* taxes or non-government imposed fees, such as a ticket agent's "service fee," do not comply with section 399.84 or the Department's enforcement case precedent.<sup>4</sup> Violations of section 399.84 constitute unfair and deceptive practices in violation of section 41712.

Additionally, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11<sup>th</sup> Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify this fee as the "September 11<sup>th</sup> Security Fee" in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. The Department considers the failure of a carrier or ticket agent to identify the September 11<sup>th</sup> Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.<sup>5</sup>

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<sup>2</sup> 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 October 24, 2011, 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.

<sup>3</sup> For example, 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 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>.

<sup>4</sup> See, e.g., *Air Jamaica, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-12-25 (December 30, 2008).

<sup>5</sup> See, e.g., *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12 (Jan. 16, 2003).

Finally, LBF is also subject to the Department's code-share disclosure requirements. 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, a ticket agent 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."

### **Facts and Conclusions**

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a significant lack of compliance by LBF with the Department's full-fare advertising rule. During at least the early part of 2011, LBF failed to include the 7.5 percent Federal excise tax, as well as its own service fee, in fares advertised on its Internet website.

More specifically, on the LBF flight itinerary page, it advertised fares with a "+ Taxes & Fees" hyperlink next to the fare. The "+ Taxes & Fees" hyperlink displayed a pop-up in which the amount of the taxes and fees and the fare were disclosed. Such fares did not include the 7.5 percent Federal excise tax and LBF's service fee, which are taxes and fees that may not be broken-out from the base fare. Additionally, LBF failed to properly disclose the excluded September 11<sup>th</sup> Security Fee on the flight itinerary page, as required by 49 CFR 1510.7, which constitutes a separate violation of 49 U.S.C. § 41712.

Our investigation also revealed a significant lack of compliance by LBF with section 257.5 of the Department's code-share disclosure rule. During at least the latter half of 2010, LBF 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. LBF's failure to properly disclose the existence of code-sharing arrangements and the names of the transporting carriers 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.

### **Mitigation**

In mitigation, LBF Travel states that it acquired [www.smartfares.com](http://www.smartfares.com) on Oct 27, 2010, and that it should not be held accountable for any violation that existed on the website prior to this date. LBF states that once it learned about the violations on its website, it worked diligently to correct the violations.

With respect to the Department's advertising regulations, LBF states that any erroneous omission of taxes and fees from fares advertised on its website was not intentional. LBF states that it corrected the advertising deficiencies as soon as they were identified.

Furthermore, with respect to the Department's code-share regulations, LBF states that it relied on its Global Distribution System (GDS) to provide the flight information on its Internet website, [www.smartfares.com](http://www.smartfares.com). LBF states that because its GDS did not provide the code share information, it was unable to display the information on its website. LBF states that as soon as its GDS provided it with the required code-share information, LBF provided this information to its customers.

### **Decision**

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

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 LBF Travel, Inc., violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that LBF Travel, Inc., violated 14 CFR 257.5(d) by failing to disclose code-sharing arrangements as required;
4. We find that by engaging in the conduct and violations described in ordering paragraphs 2 and 3 above and by failing to properly disclose the September 11<sup>th</sup> security fee, LBF Travel, Inc., engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712;

5. We order LBF Travel, Inc., and all other entities owned or controlled by, or under common ownership and control with LBF Travel, Inc., their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712, 14 CFR 399.84, and 14 CFR 257.5
6. We assess LBF Travel, Inc., \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3 and 4, above. Of this total penalty amount, \$15,000, shall be due and payable as follows: \$3,000 shall be due and payable within 90 days of the date of issuance of this order; and four additional payments of \$3,000 each shall be due and payable on December 1, 2011, March 1, 2012, June 1, 2012, and September 1, 2012. The remaining portion of the civil penalty amount, \$15,000, shall become due and payable if, before September 15, 2012, LBF Travel, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, LBF Travel, Inc., may become subject to additional enforcement action for violation of the order; and
7. Payments shall be made 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 LBF Travel, Inc., 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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