



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

Issued by the Department of Transportation
On the Eighteenth Day of February, 2010

**Southern Sky Air & Tours, LLC d/b/a
Myrtle Beach Direct Air & Tours**

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.84 and 380.27**

Served February 18, 2010

Docket DOT-OST 2010-0005

CONSENT ORDER

This consent order concerns fare displays by Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, (Direct Air) a U.S. Public Charter operator, on its website and in other print and Internet advertisements that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84, and therefore constituted an unfair and deceptive practice and unfair method of competition in violation of 14 CFR 380.27 and 49 U.S.C. § 41712. The carrier separately violated 14 CFR 380.27 and 49 U.S.C. § 41712 by failing to provide consumers adequate notice of its policy to charge fees in addition to its advertised fare for checked baggage. This order assesses Direct Air a compromise civil penalty of \$35,000 and directs the carrier to cease and desist from further similar violations.

Applicable Law

To ensure that consumers receive accurate and complete information on available airfares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged to the consumer. These requirements extend to advertisements on Internet sites. Under its enforcement case precedent, the Department has allowed certain government taxes and fees to be stated separately in fare advertisements, provided that the consumer is informed of these charges in conveniently accessible text. Fees or charges may be listed separately, under Department precedent, provided that they are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in

the advertisement so that the consumer can determine the full fare to be paid.¹ On Internet displays, these charges may be noted through a prominent link placed next to the stated fare that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed. However, all carrier-imposed fees, such as “convenience fees,” must be included in the initial fare quoted in an advertisement. Similarly, notice must be provided as to the existence of conditions related to the advertisement of “free” air transportation or associated promotional items, especially those requiring payment of taxes and fees, such as car rentals and hotels, in conjunction with the purchase of one or more other tickets. On September 4, 2003, the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office) provided guidance to the industry regarding the disclosure of additional fees, charges and restrictions on airfares in advertisements, including “free” airfares.² That guidance advised the industry that conditions, such as a requirement to pay taxes and fees, related to “free” tickets should be noted prominently and proximately to the offer of a free ticket, at a minimum through the use of an asterisk or other symbol that directs the reader’s attention to the information explaining the conditions in easily readable print elsewhere in the advertisement. This notice requirement extends to the advertisement of other free promotional items, such as car rentals and hotels, when advertised in connection with airfares.

As for the disclosure of charges associated with checked baggage, the Enforcement Office provided guidance to the industry on May 19, 2008, regarding such disclosure requirements.³ That guidance advised the industry that limiting passengers to fewer than two free checked bags of the size and weight that have generally been free in the past and assessing passengers a charge in addition to the airfare for such checked baggage is a significant condition on airfares that must be clearly disclosed to consumers. The notice of such a significant condition should, at a minimum, be placed on the first screen of a carrier’s website in which it offers a fare quotation of a specific itinerary selected by a consumer. Generally, the notice for additional baggage fees may consist of either (1) an asterisk or similar character in close proximity to the fare quotation referring to a statement on the same screen that “additional baggage charge may apply,” or (2) a more detailed summary of the baggage charges on the same screen as the fare quotation. Furthermore, regardless of the notice used, the text should contain a hyperlink to a full description of the carrier’s baggage policies.

¹ Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes.

² See, Notice entitled, “Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, including “Free” Airfares,” dated September 4, 2003, which can be found at the following site: <http://airconsumer.dot.gov/rules/guidance.htm>.

³ See, Notice entitled, “Guidance on Disclosure of Policies and Charges Associated with Checked Baggage,” dated May 19, 2008, which can be found at the following site: <http://airconsumer.dot.gov/rules/guidance.htm>.

Background

Direct Air is a South Carolina-based U.S. Public Charter operator⁴ authorized to engage in charter air transportation using large aircraft under the Department's rules, 14 CFR Part 380.

Direct Air violated the Department's full fare advertising requirements by displaying fares on its website which, on their initial presentation, did not include a carrier-assessed convenience fee. Convenience fees, as with other carrier-imposed fees that are mandatory for on-line booking, must be included in initial base fares displayed in website advertisements and other Internet advertisements, or in a range of lowest to highest fares inclusive of the fee, both on the carrier's site and on the sites of secondary vendors. On Direct Air's website, inclusion of the fee in the quoted fare did not occur until the latter stages of the booking process. In other Internet ads, inclusion of the fee in the quoted fare did not occur until the consumer was directed to Direct Air's website and then only after the consumer was in the latter stages of the booking process.

Direct Air separately violated the Department's full fare advertising requirements by failing to provide proper notice of certain government-imposed taxes and fees in its advertisements. While the Department has allowed certain government taxes and fees to be stated separately in fare advertisements, the Department requires that these taxes and fees be provided to the consumer in conveniently accessible text. In Internet ads, these may be accomplished through use of a hyperlink that takes the reader directly to a statement of the nature and amount of those taxes and fees. Direct Air's advertisements on other websites did provide notice that instructed the reader to "click here for terms and conditions." However, this hyperlink took the reader to Direct Air's general website home page, where the nature and amount of such fees were stated in smaller text on the left hand side of the home page.

In other print advertisements, Direct Air published a promotion that entitled consumers to buy one airfare and get the second airfare free, or buy one airfare and get a free car/van rental.⁵ Direct Air violated 14 CFR 399.84 by failing to adequately disclose the taxes and fees associated with the "free" air transportation or car/van rental that must be paid. Direct Air must at a minimum in such advertisements include an asterisk or other symbol that directs the reader's attention to a statement of the nature and amount of taxes and fees that must be paid in connection with the "free" terms.

Finally, Direct Air failed to provide consumers adequate notice on its website of additional fees associated with checked baggage, in that consumers were not told the amount of such charges until the latter stages of the booking process. This conduct constituted an unfair and deceptive practice in violation of 14 CFR 380.27 and 49 U.S.C. § 41712.

⁴ 14 CFR 380.2 defines a U.S. Public Charter operator as an indirect air carrier that is a citizen of the United States as defined in 49 U.S.C. § 40102(a) and that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with 14 CFR Part 380.

⁵ The language used by Direct Air in the advertisement was "Buy One Get One Free Mid-August and September... or Free Car/Van Rental."

Mitigation

In mitigation and explanation, Direct Air states that it takes compliance with government requirements very seriously. Direct Air further states that it thought its practice of advertising and disclosing taxes and fees associated with airfares complied fully with Department rules, guidance and precedent. Immediately upon learning of the Enforcement Office's concern with Direct Air's practice of advertising and disclosing taxes and fees associated with airfares, Direct Air states that it undertook the difficult task of reprogramming its website and ensuring that its advertising complied with Department regulations. Direct Air states that being a small business with only six employees, it necessarily relied on third-party website programming contractors to implement the changes to its website. That, in turn, resulted in lengthy delays in completing the desired changes, considerable disruption to Direct Air's business, and significant costs in the form of fees paid to its contractors. Direct Air states it has cooperated fully with the Department's investigation and has received no consumer complaints regarding the booking process, advertising and marketing discussed in this order.

Decision

We have carefully considered all the facts in this matter, including those presented by Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, and we believe that enforcement action is warranted in this instance. Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, for its part, in order to avoid litigation and without admitting the alleged violations, agrees to the issuance of this order to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and 380.27 and to an assessment of \$35,000 in compromise of potential civil penalties. Of this total penalty amount, \$17,500 shall be due and payable within 30 days from the date of issuance of this order. The remaining \$17,500 shall become due and payable if, within one year following the date of issuance of this order, Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, may be subject to additional enforcement action for failure to comply with this order. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and 14 CFR 380.27 and 49 U.S.C. § 41712 by Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, as well as by other sellers of air transportation.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;

2. We find that Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violated 14 CFR 399.84 by failing to include additional carrier imposed fees, referred to as convenience fees, in the fares advertised on its website;
3. We find that Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violated 14 CFR 399.84 by excluding government taxes and fees from its Internet fare advertisements without proper notice and thereby not stating the full price to be paid;
4. We find that Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violated 14 CFR 399.84 by not providing adequate notice of conditions related to the advertisement of “free” air transportation and car/van rentals;
5. We find that Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violated 14 CFR 399.84 by not providing adequate notice regarding additional baggage charges;
6. We find that by engaging in the conduct described in paragraphs 2, 3, 4, and 5, above, Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 14 CFR 380.27 and 49 U.S.C. § 41712;
7. Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 380.27 and 49 U.S.C. § 41712;
8. Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, is assessed \$35,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, 5, and 6, above. Of this total penalty amount, \$17,500 shall be due and payable within 30 days from the date of issuance of this order. The remaining \$17,500 shall become due and payable if, within one year following the date of issuance of this order, Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, violates this order’s cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, may be subject to additional enforcement action for failure to comply with this order; and
9. Payment 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 any portion of the penalty as ordered shall subject Southern Sky Air & Tours, LLC d/b/a Myrtle Beach Direct Air & Tours, to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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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