



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

Issued by the Department of Transportation  
on the 17th day of October, 2002

**Cheap Seats, Inc.  
Violations of 49 U.S.C. § 41712  
and 14 CFR 399.84**

**Served October 17, 2002**

**OST 2002-12273**

**CONSENT ORDER**

This consent order concerns advertisements by Cheap Seats, Inc. ("Cheap Seats"), a ticket agent, that violate the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399) and constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Cheap Seats, as a ticket agent, is subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by the government on a per-passenger basis, so long as their amounts are stated in the advertisement. (See, e.g., Order 97-11-14). Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised fare.

The Department has made every effort to accommodate the emergence of the Internet in the sale of air transportation. With respect to Internet fare listings, the Department has permitted notice of the existence and amount of taxes and fees that may properly be stated separately from the base fare to be provided through a prominent hyperlink proximate to the stated fare. (See, e.g., Order 2002-3-28, dated March 29, 2002); and Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfare to the Public Using the Internet, dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/>).

In addition, by Order 2001-12-7 (December 7, 2001), the Department granted a conditional exemption from its full fare advertising requirements in order to allow Orbitz, L.L.C., an online travel agent, to list its service fees separately, provided certain strict conditions are met. Consistent with the Department's action, the Enforcement Office will no longer take enforcement action against Internet travel agents that list their service fees

separately from airfares, provided that they conform to the conditions in Order 2001-12-7 and set forth in the follow-up Notice dated December 19, 2001 (*See Revised Enforcement Policy on Deceptive Practices Regarding Service Fees Charged by Travel Agents in the Marketing and Sale of Airfares to the Public via the Internet* (the "Notice"), available at: <http://airconsumer.ost.dot.gov/>).

In addition, effective December 31, 2001, the Department's Transportation Security Administration implemented an Interim Final Rule, 49 CFR Part 1510, imposing a security service fee in the amount of \$2.50 per enplanement on passengers of domestic and foreign air carriers in air transportation, originating at airports in the United States. Direct air carriers and foreign air carriers must collect the security service fees imposed on air transportation sold on or after February 1, 2002. Unless the security service fees are included in an advertised fare, pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify and ensure that their agents identify the security service fees as the "September 11<sup>th</sup> Security Fee" in all advertisements and solicitations for air transportation. The failure of a ticket agent to include the specific notice required by section 1510.7 in its fare advertisements is an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Cheap Seats failed to properly disclose the full fare, including taxes and fees, where applicable, on certain fares advertised on its website, in email promotions, and in several print advertisements. To purchase tickets from Cheap Seats, either by telephone or through its website, Cheapseatstravel.com, customers were charged a twenty-five dollar processing fee, which was added to the total ticket price before the purchase was finalized. Cheap Seats did not include this fee in airfares held out on its website, through email promotions, and in print ads, nor did it comply with the conditions set forth in Order 2001-12-7. In addition, when a consumer attempted to purchase a ticket on the Cheap Seats website, he or she was not informed of the fee until after entering a destination and travel dates, choosing an itinerary, and providing billing information and a credit card number, and was only informed of the additional fee on the last screen before a purchase was final.

In addition to failing to include the twenty-five dollar processing fee in advertised fares, from February through April 2002 Cheap Seats promoted airfares (called "Hot Fares") to various destinations on the home page of its website and in broadcast email messages. The airfares advertised failed to include all taxes and fees, and did not state the amount of such taxes and fees that may properly be separately stated, either on the same page or in a link to such information. Consumers, therefore, could not calculate the total price of the ticket.

Cheap Seats also published airfare advertisements in numerous major metropolitan newspapers throughout the U.S. from February through April 2002 that failed to include all taxes and fees in the advertised fare or to state the amount of such taxes and fees that may properly be separately stated. The advertisements varied, listing airfares to various destinations, both domestic and foreign. None of the fares advertised included taxes and fees, or stated the amount, or range in amounts, for the additional fees not included in the advertised airfares (such as segment fees, Passenger Facility Charges, September 11<sup>th</sup>

Security Fee, and, for international destinations, additional government imposed taxes and fees) to allow a consumer to calculate the full price of the advertised airfares. In addition to not stating the amount of the taxes and fees, neither the print advertisements nor the corresponding website explicitly identified the September 11<sup>th</sup> Security Fee. As published on the Internet and in print, Cheap Seats advertisements violated section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Cheap Seats states that it had no intention of providing misleading information. Cheap Seats points out that the print advertisements contained statements indicating that additional taxes and fees may apply to the advertised fares. Furthermore, the company states that customers were informed of the additional charges before they purchased their tickets. In addition, as soon as Cheap Seats was notified that its print advertisements were not in compliance with Department advertising regulations, the company states that it ceased publishing print advertising until it could obtain Department review of revised print advertisements before publication. Cheap Seats also states that upon being contacted, it immediately began work to correct its website and on July 10, 2002, Cheap Seats implemented the corrections to its website. Finally, Cheap Seats has provided financial information regarding its operations and has demonstrated that it has considerably reduced its operations since January 1, 2002.

The Aviation Enforcement Office has carefully considered all of the facts of the case, including the information provided by Cheap Seats and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. The Aviation Enforcement Office and Cheap Seats have reached a settlement of this matter in order to avoid litigation. Cheap Seats consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$30,000 in compromise of potential civil penalties payable as described below. We believe that this compromise assessment is appropriate, it takes into account the company's financial condition, and it serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Cheap Seats, as well as by airlines, other travel agents, and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

**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 Cheap Seats, Inc., has violated 14 CFR 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, and by not identifying the September 11<sup>th</sup> Security Fee by name in its

fare advertisements as required by 49 CFR 1510.7, Cheap Seats, Inc., also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

4. Cheap Seats, Inc., and all other entities owned and controlled by, or under common ownership and control with, Cheap Seats, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Cheap Seats, Inc., is assessed \$30,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of that amount, \$10,000 shall be paid as follows: \$1,250 shall be due and payable within 15 days of the service date of this order, and payments of \$1,250 shall be made on a quarterly basis thereafter, with the first quarterly payment due on or before January 31, 2003, and subsequent payments to be made every three months until the \$10,000 has been paid. The remaining \$20,000 shall be suspended for two years following issuance of this order, and then forgiven, unless Cheap Seats, Inc., violates this order's cease and desist provision within that two-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Cheap Seats, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to 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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