



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

Issued by the Department of Transportation
on the 31st day of May, 2002

Cheap Tickets, Inc.

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

Served May 31, 2002

CONSENT ORDER

This consent order concerns the failure of Cheap Tickets, Inc., ("Cheap Tickets") a discount airline ticket broker, travel agent and Internet travel vendor, properly to include fuel surcharges, where applicable, in a number of print advertisements and in certain fares on its website. The omission of these fuel surcharges violated the full-price advertising requirements of section 399.84 of the Department's rules (14 CFR 399.84), and, in addition, violated 49 U.S.C. § 41712, the statutory provision that is the basis for that consumer protection rule. This order directs Cheap Tickets to cease and desist from future similar violations and to pay a compromise civil penalty.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full price to be charged the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel plans. As we have indicated in prior consent orders, these requirements apply to advertisements on Internet sites.¹ Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are approved or 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. However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier or vendor fees, must be included in the advertised fare.

Cheap Tickets, as a travel agent, ran advertisements in newspapers throughout the U.S. during early 2000 which failed to include all surcharges in the advertised fare. Such print

¹ See, e.g.: *US Airways, Violations of 49 U.S. C. 41712 and 14 CFR 399.84, Order 20015-32; Northwest Airlines Order 99-8-23; Delta Air Lines Order 97-7-24; American Express Travel Related Services Company, Inc., Order 96-11-19.*

advertisements failed to meet the requirements of section 399.84 and were in violation of 49 U.S.C. § 41712. In addition, Power Search, one of the fare search paths on Cheap Tickets' website, failed to meet the requirements of section 399.84. Power Search fare listings were preceded by a disclaimer screen that stated that fares were for comparison purposes only and that they did not include taxes, surcharges and fees, including so-called fuel surcharges. The fares then listed did not enable the consumer to select a fare option that included the total cost of a ticket. Moreover, there were inconsistencies between the first screen of listed fares produced by the Power Search function and the fare data contained in subsequent screens once the prospective purchaser had selected a flight. These displays were, as a result, in violation of the standards of the Department's rule and enforcement case precedent, and constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Cheap Tickets states that it worked diligently with the Department to remove the discrepancies on its website and in its printed advertisements after it was first contacted in August 2000. Cheap Tickets asserts that it immediately discontinued print advertisements that did not show the required surcharges and soon thereafter deleted the Power Search feature from its website while it consulted with its software contractor in an attempt to correct the surcharge omissions. Cheap Tickets notes that immediately following notification from the Department that its fare listings might violate section 399.84, it corrected its print advertisements and, by suspending its Power Search fare compare feature, became the only Internet travel vendor to suspend the listing of airfares absent the fuel surcharges. The Power Search feature remained suspended for four months while Cheap Tickets worked diligently with its software contractor to correct the problem. These revisions, according to Cheap Tickets, took longer than the software contractor initially anticipated. In response to a decline in sales to competitors who continued to post fares that did not include all applicable charges, and which was attributable, according to the vendor, to disabling the Power Search feature, and with no immediate prospect of a technical solution, Cheap Tickets reinstated the fare search path in January 2001. The revived search feature, the vendor asserts, was preceded by an added initial page of disclaimers which alerted consumers that the fares listed on the Power Search function did not include all applicable taxes, fees, and surcharges. Cheap Tickets notes that a full reprogramming, curing the prior omission of surcharges, was completed in June 2001 and was promptly installed on the site.

Moreover, Cheap Tickets points out that it merely displayed data obtained from ATPCO, an industry clearinghouse for the collection and publication of fare data, which in turn receives its fare data from participating carriers. According to Cheap Tickets, the manner in which the carriers filed their fare data, which did not include fuel surcharges in the base fare, renders the carriers and ATPCO in part responsible for the omission of the fuel surcharges.² Furthermore, citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980), Cheap Tickets claims that the Department's

² In Order 2001-5-32, a consent order against US Airways, the Department recognized that carriers whose fares are advertised on the Internet are liable for the accuracy of the fare disclosures on their own sites and share such responsibility on sites of their agents. *See also*, Order 2001-8-1, *Northwest Airlines, Inc.*

interpretation of section 399.84 is inconsistent with the First Amendment since the information conveyed on the site was accurate, though incomplete.

The company further asserts that there exists a widespread pattern of non-compliance with the full-fare rule among retail travel agents generally and that, even if its site failed to comply with the Department's rule, Cheap Tickets' period of non-compliance was hardly exceptional in the industry.³ The company also points out that it has brought its website into full compliance with section 399.84. Cheap Tickets also noted that technical difficulties with its software contractor prevented it from correcting the discrepancies more promptly. Despite delays in amending its displays, Cheap Tickets contends that the actual consumer harm was minimal since at no time could consumers actually make bookings through its Power Search feature without viewing the full fare including all fuel surcharges.⁴ The company asserts that this was the case prior to September 2000, when the Power Search feature was temporarily suspended. After January 2001, when the feature was reinstated, the vendor maintains that the additional disclaimers which preceded any fare listing on Power Search clearly indicated what was excluded from fares on the initial screens and, again, would display the full fare with all surcharges prior to allowing the booking of a transaction.

We consider any advertisement which does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84, and, while we acknowledge that Cheap Tickets has been fully cooperative in our investigation, we believe that enforcement action is warranted in this instance. Cheap Tickets, for its part, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 in print advertisements and on its Internet site and to an assessment of \$30,000 in compromise of potential civil penalties. Of this penalty amount, \$15,000 shall be paid according to the payment schedule set out in the paragraphs below. The remaining \$15,000 shall be suspended for 390 days following issuance of this order, and then forgiven unless Cheap Tickets violates the order's cease and desist provision within that period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$30,000 penalty shall become due and payable immediately, and Cheap Tickets may be subject to further enforcement action. 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 section 41712 by Cheap Tickets, as well as by other sellers of air transportation.

³ The Office of the Assistant General Counsel for Aviation and Enforcement and Proceedings is currently investigating several other Internet travel agencies with respect to their compliance with the full-fare advertising rule and has recently settled several other cases involving fare presentations and the full-fare advertising requirements. *See e.g.* Orders 2002-3-28 (Travelocity), 2001-12-1 (Expedia), 2001-5-32 (US Airways), 2001-6-3 (Trip.com), 2001-8-1 (Northwest Airlines) and 2001-9-3 (Lowestfare.com).

⁴ The Enforcement Office does not contend that it was Cheap Tickets' intention to mislead consumers or to violate the specific requirements of section 399.84.

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 Tickets, Inc., violated 14 CFR 399.84 by advertising fares in the print media and on its Internet site which failed to include applicable fuel surcharges, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Cheap Tickets, Inc., violated 49 U.S.C. § 41712;
4. Cheap Tickets, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Cheap Tickets is assessed \$30,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of that penalty amount, \$15,000 shall be paid in two equal installments of \$7,500 each. The first payment shall be due and payable within 30 days of the service date of this order; the second payment shall be due and payable 390 days following the service date. The remaining \$15,000 shall be suspended for 390 days following service of this order, and then forgiven, unless Cheap Tickets violates this order's cease and desist provisions within the 390-day suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$30,000 penalty shall become due and payable immediately, and Cheap Tickets may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject Cheap Tickets, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible 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

(SEAL)

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