



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

Issued by the Department of Transportation
on the **16th day of January, 2003**

A Better Airfare, LLC

Docket OST-2003-14194

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

CONSENT ORDER

This consent order concerns advertisements by A Better Airfare, LLC d/b/a Air4Less and mydestinationsonline.com (“A Better Airfare”) a ticket agent, that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department’s regulations (14 CFR Part 399). This order directs A Better Airfare to cease and desist from future violations and to pay compromise civil penalties.

A Better Airfare, 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 appear or 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.

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 11th 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. A Better Airfare failed to properly disclose the full fare, including applicable taxes and fees, where applicable, in several print advertisements and certain fares advertised on its website.

A Better Airfare published airfare advertisements in numerous major metropolitan newspapers throughout the U.S. in February and March 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 be separately stated. The advertisements listed airfares to ten different destinations. The fares and destinations vary by the city where the advertisement was published. Most of the advertised fares were for flights to domestic destinations; however, some of the advertisements included an airfare to Cancun, Mexico. In addition to the print advertisements, A Better Airfare maintains a corresponding Internet website that advertises airfares. None of the print advertisements indicated a range for the additional fees not included in the advertised airfare (such as segment fees, Passenger Facility Charges, September 11th Security Fee, and, for international destinations, additional government imposed fees) to allow a consumer to calculate the full price of the advertised airfares. The website cited in the print advertisements also did not include information regarding additional fees which would have allowed the consumer to calculate the full price of the advertised airfares. In addition to not stating a range of fees, neither the print advertisements nor the corresponding website explicitly listed by name the September 11th Security Fee, although it was also broken out of the base fare.

In a separate promotion, mydestinationsonline.com, another website owned by A Better Airfare, promoted a travel package which stated that “Kids Fly and Ski Free” although, in fact, there were taxes and fees to be paid on all “free” tickets. The restrictions section of the promotion stated, “All applicable taxes, fees, surcharges, etc. must be paid on all free tickets.” However, there was no stated amount of these additional taxes or an explanation of the nature of the taxes, nor any hyperlink to such information to allow the consumer to calculate the actual price of the tickets. As published on the Internet and in print, A Better Airfare’s advertisements violated section 399.84 of the Department’s regulations and 49 U.S.C. § 41712.

In mitigation, A Better Airfare states that it had no intention of providing misleading information. A Better Airfare points out that both the print and Internet Air4Less advertisements contained statements indicating that additional taxes and fees may apply to the advertised fares. Furthermore, the company states that customers are informed of the additional charges before they purchase their tickets. In addition, as soon as the company was notified that its 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 future advertisements, and immediately corrected the corresponding website.

The Aviation Enforcement Office has carefully considered all of the facts of the case, including the information provided by A Better Airfare and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. The Aviation Enforcement Office and A Better Airfare have reached a settlement of this matter in order to avoid litigation. A Better Airfare 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 \$20,000 in compromise of potential civil penalties payable as described below. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by A Better Airfare, as well as by airlines, 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 A Better Airfare, LLC d/b/a Air4Less and mydestinationonline.com, 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 11th Security Fee by name as required by 49 CFR 1510.7, A Better Airfare, LLC d/b/a Air4Less and mydestinationonline.com also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. A Better Airfare, LLC d/b/a Air4Less and mydestinationonline.com, and all other entities owned and controlled by, or under common ownership and control with, A Better Airfare, LLC 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. A Better Airfare, LLC, is assessed \$20,000 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 penalty amount \$2,500 shall become due and payable within 15 days of the service date of this order, \$2,500 on March 31, 2003, \$2,500 on June 30, 2003, and the remaining \$2,500 on September 30, 2003. The remaining \$10,000 shall be suspended for one year following issuance of this order, and then forgiven, unless A Better Airfare, LLC, violates this order's cease and desist provision within that one-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 A Better Airfare, LLC, 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. 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. 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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