



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

Issued by the Department of Transportation
on the 10th day of June, 2003

Served: June 13, 2003

OST Docket 2003-15034

Hobbit Travel, Inc.

Violations of 49 U.S.C. § 41712
and 14 CFR 399.80 and 14 CFR 399.84

CONSENT ORDER

On April 24, 2003, the Office of Aviation Enforcement and Proceedings (Enforcement Office) served a formal complaint and notice of enforcement proceeding under 14 CFR 302.401 on Hobbit Travel, Inc. (Hobbit or Respondent). The complaint alleged that Hobbit, a tour operator and travel agent, failed to include all applicable taxes and additional fees in air fares in a number of its print advertisements. In addition, the complaint alleged that the company's website (www.hobbittravel.com) failed to include all taxes and fees in its initial display of fares. These omissions allegedly violated the Department's rule governing ticket agent advertising practices (14 CFR 399.80) and its rule on full-fare advertising (14 CFR 399.84), and, in addition, violated 49 U.S.C. § 41712, the statutory provision prohibiting unfair and deceptive trade practices that is the basis for those consumer protection rules. This order, reflecting a settlement of this matter between the Enforcement Office and the Respondent, directs Hobbit and its affiliated companies to cease and desist from future similar violations and to pay a compromise civil penalty.

During several months in 2002, Hobbit, as a retail travel agent, published air fare advertisements in the Minneapolis *Star Tribune* which included a notation that passenger facility charges (PFCs), taxes and fuel surcharges were extra, but failed to state the amount of such taxes and fees. In addition, from at least September 2002 until May 2003, Hobbit offered individual ticket sales on its website which required that consumers use a search path which did not show all taxes and government fees in its initial fare display or contain a prominent reference to such taxes and fees linking consumers directly to a web site that displayed their amounts. The site disclosed the full fare, with all additional charges, only after a

consumer had selected from among a list of alternative itineraries, specifying the carrier and flight number, and requested a final fare quotation.

The Enforcement Office alleged that these advertising and sales practices violated two regulatory provisions, 14 CFR 399.80 and 14 CFR 399.84, and the related statutory provision, 49 U.S.C. § 41712. In 14 CFR 399.80, the Department has stated that, as a matter of policy, it regards certain practices by a ticket agent to be unfair and deceptive practices or unfair methods of competition, including "misrepresentations as to fares and charges for air transportation or services in connection therewith." (Section 399.80(f)). Under 14 CFR 399.84, the Department's full-fare advertising rule, fare advertisements by air carriers or their agents must state the full price to be charged the consumer. Long-standing enforcement case precedent allows 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.¹ However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier fees must be included in the advertised fare.² To the extent any taxes, fees, or surcharges were collected, the print advertisements of Hobbit in mid-2002 were in clear violation of these requirements.

The Department has made every effort to accommodate the emergence of the Internet in the sale of air transportation. In Internet advertising displays, the full fare may be stated in the first screen display which provides fare quotes in response to a consumer inquiry, or the existence of permissible additional charges may be prominently disclosed with a clearly-presented hyperlink to take the consumer to a page showing the amounts of those charges. A search engine cannot, as Hobbit's did, require a consumer, after viewing fare quotes displayed in response to his or her inquiry, to go to a subsequent booking page to find the full fare. Hobbit's search process, as described in the complaint, disclosed the full fare, with all additional charges, only after a consumer had selected from among a list of alternative itineraries, specifying the carrier and flight number, and requested a final fare quotation.

¹ See *Expedia, Inc.*, Order 2001-12-1; *Orbitz, Inc.*, Order 2001-12-7; *Travelocity, Inc.*, Order 2002-3-28; *Cheap Tickets, Inc.*, Order 2002-5-30; *Cheap Seats, Inc.*, Order 2002-10-21; and Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet, January 18, 2001 at <http://airconsumer.ost.dot.gov/rules.htm>

² A limited exception exists for service fees which, under an exemption issued to Orbitz, may be listed separately so long as a total price, including all charges, appears on the same screen with the fare. (See *Orbitz, Inc.*, Order 2001-12-7)

In mitigation, Hobbit states that its print advertisements always in fact stated the full fare charged the consumer, despite the disclaimer advising that taxes and fees were extra. According to Hobbit, the disclaimer was intended as a safeguard against any possible omission on the part of its fare data supplier. Hobbit intended to display the full fare at all times and in fact did so, but, according to its statements, the travel agent was concerned, in light of air fare filing practices that in the past have occasionally omitted surcharges and taxes, that it would be liable to consumers if its advertisements unintentionally offered fares that failed to include all charges. With respect to its website, Hobbit states that it maintained an active website through which it could accept bookings from September 2002 until April 25, 2003, when it discontinued the service after inquiries by the Enforcement Office. The site, according to Hobbit, was rarely used for bookings, having a weekly volume of approximately 10 reservations, and never completed a booking for a foreign itinerary. According to Hobbit, it provided the service not with the expectation of earning significant revenue but to provide a source of fare quotes for its customers. Hobbit asserts that it had discussions with Sabre, the supplier of its fare data, on several occasions following the Enforcement Office's first inquiries and was assured that its web displays were in compliance with Department rules.

The Enforcement Office, after taking into account the arguments and mitigation presented by Hobbit, maintains that enforcement action is warranted in this case. It is clear from the facts of this case that Hobbit committed violations of section 41712 and sections 399.80 and 399.84. However, based on a lack of evidence contravening the agency's assertions regarding its print advertisements that its advertised fares were in fact inclusive of all fees and taxes and that it did not collect fares in excess of the advertised fares, this order finds no specific violations with respect to the print advertisements. With respect to the Internet site, on the other hand, although Hobbit may have made few direct sales through its website, the site was designed to attract consumers to Hobbit's advertised fares and was active for several months during which its displays were clearly in violation of the Department's advertising requirements.

The Deputy General Counsel and Hobbit have reached a settlement of this matter. Hobbit, 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 14 CFR 399.80 and 14 CFR 399.84, as well as 49 U.S.C. § 41712, in print advertisements and on its Internet website, and to an assessment of \$40,000 in compromise of potential civil penalties. Of this penalty amount, \$20,000 shall be paid within 45 days of the service date of this order. The remaining \$20,000 shall be suspended for one year following the service date of this order, and then forgiven unless the carrier 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 \$40,000 penalty shall

become due and payable immediately, and Hobbit 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 Hobbit, as well as by other vendors of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.11(d).

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 Hobbit Travel, Inc., as a ticket agent, violated 14 CFR 399.80 by advertising fares on the Internet at its website (www.hobbittravel.com) which failed to display all applicable fuel surcharges, taxes and fees, as described above;
2. We find that Hobbit Travel, Inc., as an agent for air carriers, violated 14 CFR 399.84 by advertising fares on the Internet at its website (www.hobbittravel.com) which failed to display appropriately all applicable surcharges, taxes and fees as described above;
3. We find that by engaging in the conduct described in paragraph 2 and 3, above, Hobbit Travel, Inc., also violated 49 U.S.C. § 41712, which proscribes unfair and deceptive trade practices and unfair methods of competition;
4. Hobbit Travel, Inc., and its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.80, 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Hobbit Travel, Inc., is assessed \$40,000 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, \$20,000 shall be due and payable within 45 days of the service date of this order. The remaining \$20,000 shall be suspended for one year following the service date of this order, and then forgiven, unless Hobbit Travel, Inc., violates this order's cease and desist provisions within the suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$40,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject Hobbit Travel, 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 30 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

Burton S. Kolko
Administrative Law Judge

(SEAL)

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http://dms.dot.gov/reports/reports_aviation.asp*

Attachment

(1) To 021030004	(2) Type	
(3) From	(4) Ref.	(5) Amount
(6) Ordering Bank and Related Data		
(7/8) TREAS NYC/CTR/OST		
(9) BNF=/AC-69010005 OBI=		
(10) Payor		
(11)		

1. **Treasury Department Code—Provided**
2. **Type Code—To be provided by sending bank.**
3. **Sending Bank’s Code—(ABA#)**
4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
5. **Amount—Include dollar sign and punctuation including cents digits.**
6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
- 7/8. **Entire line provided precisely as shown.**
9. **Entire line provided precisely as shown.**
10. **Enter name of air carrier or other payor (as shown on order).**
11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state “installment” or “full payment.”**

NOTE: Questions about these instructions should be directed to Ms. Betty Barber, Office of Financial and Budget, General Accounting Branch, AMZ-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125, phone: (405) 954-1194, fax: (405) 954-3930. To ensure proper credit, notify Ms. Barber when each payment is made.

SERVICE LIST

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