



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

Issued by the Department of Transportation
on the **14th day of July, 2003**

Liberty Travel

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

**Served: July 14, 2003
Docket OST-2003-14194**

CONSENT ORDER

This consent order concerns website advertisements by Liberty Travel ("Liberty"), a travel vendor, that violated 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 Liberty to cease and desist from future violations and to pay compromise civil penalties.

Liberty, as a ticket agent, is subject to the advertising requirements of Part 399 of the Department's rules. Under section 399.84, any advertisement 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 consumer to the air carrier or agent for such air transportation, tour or tour component. However, pursuant to its enforcement case precedent, 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.

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 Order 2002-3-28 (March 29, 2002); and the Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfare to the Public Using the Internet, dated January 18, 2001, which is available at: <http://airconsumer.ost.dot.gov>.)

Liberty has advertised airfares on its Internet website, www.Liberty.com, during 2003 that failed to include all taxes and fees in the quoted fare or to properly contain a

prominent reference to taxes and fees that may properly be excluded from the fare, along with a link to a page with their amounts. Specifically, on Liberty's website, there is a list of "Hot Deals" on its homepage. These Hot Deals include a number of travel packages to different destinations that include roundtrip airfare. There is no mention on the home page of whether taxes and fees are included in the advertised fare. If a Hot Deals destination is selected, the website immediately goes to an information page for that particular deal. This page includes a pricing guide that lists approximately eleven departure cities with individualized fare quotes. These fares do not indicate whether they include taxes and fees and a consumer would not know that certain taxes and fees are not included unless he or she by chance scrolled down past the fares being advertised to the small print paragraph at the bottom of the page entitled "Terms And Conditions." No asterisk or link exists near the advertised fare to lead the consumer to the tax and fee disclosure. By failing to state the full price that a consumer must pay, Liberty violated 14 CFR 399.84 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

In mitigation, Liberty states that its website has always included a disclosure of the additional taxes and fees that may be applicable to the fares listed on its website. Liberty points out that information on additional taxes and fees that may have been applicable to the "Hot Deals" appeared on the very same web page that provided the consumer with individualized fare quotes on those Hot Deals. Liberty Travel states that it has not intended to mislead consumers as to the full price of any fares, and does not believe that any of its consumers have been misled by the matters at issue in this Consent Order. Nevertheless, Liberty notes that after the Department raised its concerns regarding this matter, Liberty promptly revised its website to a format acceptable to the Department. According to Liberty, the revisions were made and it agreed to the relief provided in this Consent Order as a settlement in order to avoid litigation and without any admission of liability or admission as to any underlying factual contentions of the Department in this matter.

The Aviation Enforcement Office has carefully considered all of the facts of this case, including the information provided by Liberty Travel and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. The Aviation Enforcement Office and Liberty have reached a settlement of this matter in order to avoid litigation. Liberty Travel, for its part, in order to avoid litigation and without admitting or denying the alleged violations, 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, of which one half will be payable according to the payment schedule 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 Liberty Travel, 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 Liberty Travel, Inc., has violated 14 CFR 399.84 by advertising on its website airfares 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, Liberty Travel, Inc., also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Liberty Travel, Inc., and all other entities owned and controlled by, or under common ownership and control with, Liberty Travel, Inc., and their successors and assignees, are ordered to cease and desist from future similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Liberty Travel, 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 which \$15,000 shall be paid in two equal installments of \$7,500 each. The first payment shall be due and payable 30 days after the service date of this order. The second payment shall be due and payable 60 days after the service date. The remaining \$15,000 of the compromise penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Liberty Travel, Inc., complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period. If Liberty Travel, Inc., fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately;
6. Failure to pay the compromise assessment as ordered will subject Liberty Travel, 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
7. 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

(SEAL)

Liberty Travel

Samuel Podberesky
Assistant General Counsel for
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Liberty Travel
(Employer ID Number)

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