



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

Issued by the Department of Transportation
on the **5th day of August, 2003**

OneTravel.com

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

**Served: August 5, 2003
Docket OST-2003-14194**

CONSENT ORDER

This consent order concerns website advertisements by OneTravel.com (“OneTravel”), an Internet 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 OneTravel to cease and desist from future violations and to pay compromise civil penalties.

OneTravel, 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.

In addition, effective December 31, 2001, the 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. § 41712.¹

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>.)

In addition, by Order 2001-12-7 (December 7, 2001), the Department granted a conditional exemption from its airfare 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>.)

OneTravel advertised airfares on its Internet website, www.OneTravel.com, during 2002 and early 2003, that failed to include all taxes and fees in the quoted fare or to state the amount of such taxes and fees that may be separately stated. On OneTravel's website, a consumer could find round-trip flights by specifying a city pair and travel date. The website then displayed a list of itineraries, including fares. Some of these fares stated that taxes are included. However, others stated "estimated taxes" and included an amount and some stated "taxes are not included." None of the advertisements quoting fares that stated "taxes not included" stated the nature and amount of the excluded taxes or provided a hyperlink to such information. OneTravel also failed to comply with the conditions of the Orbitz exemption when listing the service fees it imposed on ticket fares, and it also failed to specifically disclose the "September 11th Security Fee" on its website.

In addition, a notice beneath each itinerary had a sentence stating: "You may find better pricing with negotiated and White Label deals." If a consumer then selected this option, he or she would be given another set of flight options, which are White Label flight

¹ Under Title IV of the Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. No. 108-11, 117 Stat. 557, the "Under Secretary for Border and Transportation Security of the Department of Homeland Security shall not impose the fees authorized by section 44940(a) of the title 49, United States Code, during the period beginning June 1, 2003, and ending September 30, 2003." One of the fees authorized by 49 U.S.C. § 44940(a) is the September 11th Security Fee as promulgated by 49 C.F.R. Part 1510. Therefore, air carriers and travel agents shall not collect the September 11th Security Fee between midnight on May 31, 2003, and midnight on September 30, 2003, but must resume collecting on and after October 1, 2003.

fares.² The White Label fare quotes stated “Taxes NOT Included,” “Estimated Taxes Per Person” or “Taxes Included.” If a consumer attempted to book a White Label fare that states that taxes are not included, once the taxes are added to the White Label fare, some of those fares are exactly the same as the initial fare quote and some are actually higher than One Travel’s initial fare quote. In this regard, OneTravel’s website advertisements, especially the White Label fare quotes, were confusing and did not contain sufficient information regarding the additional taxes to allow a consumer to calculate the full price of the quoted airfare.

By failing to state the full price of the fare that a consumer must pay or to comply with the Department’s enforcement case precedent regarding full fare advertising, OneTravel violated 14 CFR 399.84 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712. Under 49 U.S.C. § 46301, OneTravel is subject to civil penalties of up to \$2,500 for each violation of this regulation and statutory provision and \$2,500 for each day each such violation continues.

In mitigation, OneTravel states that it had no intention of providing confusing or misleading information. OneTravel notes that it has instituted a one-step results process and has changed the way the White Label fares are displayed. OneTravel also states that the actual taxes and fees are always provided to the consumer prior to the purchase once the consumer chooses a particular itinerary and that it no longer quotes “estimated taxes.”

The Aviation Enforcement Office has carefully considered all of the facts of this case, including the information provided by OneTravel and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. The Aviation Enforcement Office and OneTravel have reached a settlement of this matter in order to avoid litigation. OneTravel 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. 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 OneTravel, 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 OneTravel.com, 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;

² OneTravel states that it is able to offer these White Label fares because of agreements that have been negotiated with airlines that require OneTravel to conceal the airline name and/or schedule, flight numbers or connection cities until after the ticket is purchased. They are special fares that are non-refundable, non-transferable and non-changeable.

3. We find that by engaging in the conduct described in ordering paragraph 2 above, OneTravel.com, Inc., also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. OneTravel.com, Inc., and all other entities owned and controlled by, or under common ownership and control with, OneTravel.com, 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. OneTravel.com, 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 OneTravel.com, Inc., complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period. If OneTravel.com, Inc., fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately; 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

(SEAL)

An electronic version of this document is available
on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp