



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 October, 2006

Travelocity.com LP

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

Docket OST 2006-23528

Served October 5, 2006

CONSENT ORDER

This consent order concerns the failure of Travelocity.com LP (Travelocity) to include all carrier-imposed surcharges in airfare quotes provided in a flexible date pricing display on its website for certain international searches.¹ As a result of these omissions, certain Travelocity fare displays did not fully comply with the full-price advertising requirements of section 399.84 of the Department's rules (14 CFR 399.84) and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. By this order, the Department directs Travelocity.com to cease and desist from future similar violations and to monitor its fare displays to ensure continued compliance with section 399.84.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents, including Internet fare displays, must state the full price 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. In its 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 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 carrier-imposed surcharges, such as fuel surcharges or security surcharges, as well as *ad valorem* taxes, must be included in the advertised fare.²

¹ This consent order only relates to flexible date searches in markets where carriers filed flight-specific fuel surcharges. It does not refer to such searches in markets in which carriers filed market-specific fuel surcharges, e.g. U.S.-Canada markets.

² On September 18, 2006, the Department withdrew a notice of proposed rulemaking relating to 14 CFR 399.84, in effect finding that the rule and related enforcement policies have worked well and that the rule should not be changed.

The compliance issue in this instance arose on Travelocity's flexible-date search feature for certain international searches known as the "Flexible Fare Finder International" (FFFi) in which the consumer did not initially specify travel dates but requested the lowest published fares in a city-pair market over a period of up to nine months from the date of inquiry. This search path produced an initial fare display in which a hyperlinked plus sign indicated that "some taxes, additional fees apply." The hyperlink to that text described government taxes and stated that for international itineraries taxes of up to \$200 might apply, but made no reference to carrier-imposed surcharges. After a consumer selected a specific carrier, dates of travel and itinerary, with specific flights, and before any purchase decision, the Travelocity site would price the total ticket cost, providing a complete price including any carrier-imposed surcharges as well as government-imposed fees.³

These departures from the requirements of section 399.84 were the result of the fundamental nature of FFFi, which as discussed above, was a fare-based, not date- or flight-based tool, as well as changes in the manner in which carriers, in particular foreign carriers, filed carrier-imposed surcharges after October 2004.⁴ Travelocity gathered its fare data from the Sabre Global Distribution System (GDS), which derived its information from carrier filings with the Airline Tariff Publishing Company (ATPCO), but its fare data, for purposes of the FFFi, were compiled on the basis of city-pair markets. In their filings with ATPCO subsequent to October 2004, some carriers began filing surcharges in a format that was not market-specific but was keyed to individual itineraries and flight numbers.⁵ As a result, for carriers filing in the new format, the initial fare displayed in FFFi did not include surcharges, while for carriers filing in the previous format, the fare continued to include any such charges. When fares were initially ranked for a city-pair market, the fares, which excluded carrier surcharges, and as a result were in general lower than the fares displayed for carriers that did not exclude carrier-imposed surcharges, appeared at the top of the display. The actual total price of these fares, which was displayed after the consumer had proceeded through the selection of a carrier, specific dates of travel and flights, was sometimes higher than competing

³ On the same screen that included the complete price, FFFi also provided, if available, up to three lower-priced alternative itineraries on the selected dates of travel, inclusive of carrier-imposed surcharges.

⁴ By a notice dated October 14, 2004, the Department stated that it was a matter of carrier discretion whether to file surcharges as general rules tariffs. This replaced the prior prohibition, as a matter of policy, on filing carrier surcharges in individual carrier tariffs. In that notice, however, the Department made clear that its revised tariff-filing policy did not affect carriers' obligations to comply with Department advertising requirements. The Enforcement Office has pending investigations regarding the practices of several carriers whose fares were displayed on the Travelocity website without carrier-imposed charges.

⁵ The previous filing format submitted carrier surcharges as a "Category 12" charge which was market-specific and which ensured the surcharges were included in fares displayed on the FFFi. However, subsequent to October 2004 carriers began filing in a YQ/YR format, which was flight- rather than market-specific. Although foreign carriers were among the first to adopt this filing practice, recently a number of U.S. carriers appear to have adopted the YQ/YR filing format in certain markets as well.

fares, which, because they were initially displayed inclusive of surcharges, appeared lower in ranking in the initial list of fares. Therefore, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes the ranking in the initial FFFi displays was potentially deceptive to consumers and in violation of 14 CFR 399.84 and may have provided an unfair competitive advantage to carriers filing surcharges in the flight-specific (YQ/YR) format.

In mitigation and in response to the concerns expressed by the Enforcement Office, Travelocity states that its FFFi design was not the proximate cause of the issue addressed by this order; rather, the issue arose because carriers changed their fare filing procedures as permitted by the Department. Moreover, Travelocity argues that it explored over a period of four months, at significant cost to itself and at the suggestion of the Enforcement Office, a number of compromise proposals and technical resolutions to the fare-gathering mechanism and found no feasible means for including the flight-specific surcharges in the initial fare displays of FFFi.

According to Travelocity, FFFi was, despite the Enforcement Office's concerns with its initial page display, a valuable consumer resource for which there is no counterpart at any other Internet site and which provided consumer savings of several million dollars each year. In Travelocity's opinion, price sensitive consumers with the flexibility to travel on different dates and at different times achieved significant savings. In response to the Enforcement Office's concerns, Travelocity ultimately disabled FFFi on or about July 17, 2006, for those markets in which carriers use flight-specific carrier-imposed surcharges.⁶ Travelocity states that it has not received any consumer complaints arising from FFFi or the issues described in this Consent Order, but has received consumer complaints about disabling the tool.⁷

As we have indicated, in light of the omissions of carrier-imposed surcharges, the Enforcement Office believes the FFFi displays in question did not comply with the Department's full fare advertising rule. In the view of the Enforcement Office, the ranking of fares that resulted created the potential for consumer deception since carrier-imposed surcharges were not uniformly included in the fare quotes of all carriers.

We consider displays that do 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 Travelocity has been fully cooperative in our investigation, we believe that enforcement action is warranted in this instance. Travelocity, for its part, in order to resolve this matter and 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 on its Internet site and to monitor its fare displays to ensure continued compliance with section 399.84. This settlement places air carriers and air travel vendors on notice regarding the need to remain vigilant with regard to continuing

⁶ FFFi is currently disabled for all international markets where carriers are using YQ/YR fuel surcharges.

⁷ The Enforcement Office confirms that it has received no recent complaints against the FFFi by consumers.

compliance with the Department's advertising rules, and to remain fully apprised of current fare filing practices.

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 the order as being in the public interest;
2. We find that Travelocity.com violated 14 CFR 399.84 by advertising fares on its Internet site through its FFFi which failed properly to include applicable carrier-imposed surcharges, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Travelocity.com , engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712; and
4. Travelocity.com is ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712 and to monitor its fare displays to ensure continued compliance with section 399.84.

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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