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

Issued by the Department of Transportation
On the Twenty-Eighth day of December, 2012

Eros Group, Inc.	**Docket DOT-OST 2012-0002**
Violations of 49 U.S.C. § 41712 and 14 CFR 257.5 and 399.84	**Served December 28, 2012**

CONSENT ORDER

This consent order concerns Internet advertisements by Eros Group, Inc., (Eros) that violate the advertising and codeshare disclosure requirements specified in 14 CFR 399.84, and 257.5, respectively, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Eros to cease and desist from future violations of sections 399.84 and 257.5, and section 41712, and assesses the company a compromise civil penalty of $30,000.

Applicable Law

As a ticket agent, Eros is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, carriers advertising airfares must state the full price to be paid by the consumer. Prior to January 26, 2012, the Department allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements, so long as such taxes and fees were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately

determine the full fare to be paid. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.[1]

Section 257.4 of the code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712, unless, in conjunction with that holding out or sale, the advertiser follows certain notice requirements, including those of 14 CFR 257.5(d). The specific terms of section 257.5(d) require that print advertisements, including those published on the Internet, "prominently disclose that the advertised service may involve travel on another carrier," "clearly indicate the nature of the service in reasonably sized type," and "identify all potential transporting carriers… by corporate name and by any other name under which that service is held out to the public."

Facts and Conclusions

In the spring of 2011, the Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted a search of websites under the control of Eros. When advertising code-share flights operated on behalf of a major air carrier by a regional air carrier, these websites failed on their flight itinerary pages to disclose the existence of code-sharing arrangements by displaying the corporate names of the transporting carriers and any other names under which those flights were held out to the public. Eros' failure to disclose prominently, on the first page on which fares were advertised, the existence of code-sharing arrangements and the names of the transporting carriers could have deceived consumers regarding the identity of the airline that actually operated the aircraft on which they flew.

Also in the spring of 2011, the homepage of one of Eros' websites advertised numerous fares within the United States and between the United States and foreign points without disclosing that taxes and fees were extra in any of the acceptable ways described above. Rather, each advertisement stated a fare that did not include additional taxes and fees. Although the website stated below each fare that "terms and conditions appl[ied]," this summary statement did not provide any information about the existence and the amount of the additional taxes and fees. In fact, nowhere on the advertisement itself or on the homepage were the existence and amounts of the additional taxes stated. Rather, only after consumers selected a city and fare from the home page, and were taken to a landing page were they notified of the existence and amounts of additional taxes and fees. Eros' failure to provide proper notice of taxes and fees that may legally be stated separately from the fare violates 14 CFR 399.84 and 49 U.S.C. § 41712.

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[1] *See, e.g., US Airways, Inc*., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2011-6-2 (June 2, 2011*); Delta Air Lines, In.,*. Violations of 49 U.S.C. § 41712 and 14 CFR 399.84 Order 2010-5-30 (May 28, 2010); On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which became effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier-or agent-imposed charges, such as fuel surcharges or convenience fees from advertised fares remains in effect.

Mitigation

In mitigation, Eros states that it takes seriously its responsibility to comply with DOT regulations and enforcement case precedent. Moreover, Eros further states that it is strongly committed to promoting its fares and services in a transparent and understandable manner, and in no way intended to mislead any would-be passenger. Eros asserts that it never received any consumer complaints with respect to the fare advertising in question and that it also conducted a review of other advertising media. Eros states that it is confident that it will comply with DOT regulations in the future and avoid any additional violations.

Decision

The Enforcement Office has carefully considered the information provided by Eros and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Eros have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Eros consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712, 14 CFR 399.84, and 14 CFR Part 257, and to the assessment of $30,000 in compromise of potential civil penalties otherwise due and payable.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's advertising and code-share disclosure requirements.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;

2. We find that Eros Group, Inc., violated 14 CFR 257.5 by failing to disclose code-sharing arrangements as required;

3. We find that Eros Group, Inc., violated 14 CFR 399.84 by advertising fares that failed to provide proper notice of taxes and fees that legally may be stated separately from the fare;

4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Eros Group, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

5. We order Eros Group, Inc., and all other entities owned or controlled by, or under common ownership and control with Eros Group, Inc., their successors, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712, 14 CFR 257.5, and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Eros Group, Inc., and its successors and assignees to further enforcement action;

6. We assess Eros Group, Inc., $30,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, $15,000, shall be due and payable as follows: $1,000 shall be due and payable within 15 days of the date of issuance of this order, and fourteen additional payments of $1,000 each shall be due and payable on January 15, 2013, February 15, 2013, March 15, 2013, April 15, 2013, May 15, 2013, June 15, 2013, July 15, 2013, August 15, 2013, September 15, 2013, October 15, 2013, November 15, 2013, December 15, 2013, January 15, 2014, and February 15, 2014. The remaining portion of the civil penalty amount, $15,000, shall become due and payable if, Eros Group, Inc., violates this order's cease and desist provisions before March 15, 2014, or fails to comply with this order's payment provisions, in which case Eros Group, Inc., may become subject to additional enforcement action for any violation of the order; and

7. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Eros Group, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with 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:

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Aviation Enforcement and Proceedings

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