



**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 August, 2014**

**Voyager Travel LLC, formerly d/b/a LDS
Travel and Meridian Trips LLC, and Brian
Mickelsen**

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.84, 399.88 and 399.89**

Docket OST 2014-0001

Served August 14, 2014

CONSENT ORDER

This consent order concerns advertisements by Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, (collectively Voyager Travel) and Brian Mickelsen, the owner and former member of the LLC, in his personal capacity, that violated the Department's advertising requirements specified in 14 CFR Part 399, and constituted unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. An investigation by the Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") revealed that prior to January 26, 2012, Voyager Travel advertised air tour packages in a manner that did not meet Department requirements under Part 399 because the advertisements failed to include all fuel surcharges in the prices advertised, failed to state that the prices were subject to post purchase price increases, and failed to provide appropriate notice of the existence, nature, and amount of other charges and additional taxes and government-imposed fees that were then permitted to be stated separately from the base fare. Voyager Travel's advertisements published on and after January 26, 2012, continued to state that the prices were subject to increases even after final payment. Those advertisements violated 14 CFR 399.84(a), 399.88, and 399.89.

This order directs Voyager Travel and Brian Mickelsen, in his personal capacity, to cease and desist from future violations of 49 U.S.C. § 41712 and Part 399 and assesses the company and Mr. Mickelsen, jointly and severally, a compromise civil penalty of \$20,000. Mr. Mickelsen is also ordered to cease and desist for a period of ten years from the date of the issuance of this order from engaging in air transportation operations.

Applicable Law

Ticket agents selling air tour packages, including air and hotel packages, such as Voyager Travel, are subject to the advertising requirements of Part 399 of the Department's rules. Under 14 CFR 399.84, any advertising that states a price for air transportation or an air tour 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 customer to the air carrier or ticket agent for such air transportation, tour, or tour component. Prior to January 26, 2012, as a matter of enforcement policy, the Department permitted air carriers and agents to state separately from the advertised price taxes and fees imposed by a government on a per-passenger basis, such as passenger facility charges, so long as their amounts appeared or were indicated clearly in the advertisement so that the consumer could determine the full price to be paid.¹ On the other hand, carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, always had to be included in the advertised price.² Moreover, when an air tour seller or carrier advertised a specific price for a flight, air tour or component, it had to have had on hand a reasonable inventory at the advertised price for a reasonable time period.³

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, required airlines and ticket agents to comply with the Department's full-fare advertising rule as written. The revised full-fare rule mandates that the price advertised for passenger air transportation include all taxes and government-imposed fees and all mandatory airline- and ticket agent-imposed surcharges and fees in every advertised fare or price.⁴ This provision was codified in 14 CFR 399.84(a), which took effect on January 26, 2012.

¹ See, e.g., *Costa Cruise Lines, N.V.*, Order 2009-9-3 (September 3, 2009). Under the enforcement policy in effect prior to January 26, 2012, with respect to airfares and air tours advertised on the Internet, taxes and government fees that were permitted to be excluded from the advertised price had to be noted in a prominent link, placed adjacent to the stated price the first time the price was shown that took the viewer to the bottom of the screen, or to a place on a separate screen, where a description and the amount of such taxes and fees were displayed.

² See, e.g., *GTS Globotours*, Order 2014-2-14 (February 20, 2014); *Bloomspot, Inc.*, Order 2013-7-27 (July 31, 2013); *British Airways*, Order 2012-10-1 (October 1, 2012); *Tour Beyond, Inc., d/b/a China Spree*, Order 2011-106 (February 9, 2011); and orders cited therein.

³ *AirTran Airlines*, Order 2010-5-29 (May 28, 2010).

⁴ Charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or “pop ups.” On web sites that display the total price, such charges may not be false or misleading may not be displayed as prominently as the full fare, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

As under the prior rule, significant restrictions, such as double occupancy and conditions on availability must be properly disclosed with the pertinent advertised fares.⁵

In addition, under section 399.88, the seller may not add or increase taxes and government fees after the consumer has paid in full unless the seller has given notice and obtained the consumer's written consent before full payment. This narrow exception only applies to a post purchase price increase in a government-imposed fee or tax. Once full payment has been made, other types of price increases are prohibited. Under section 399.89, price increases, for example, for a fuel surcharge, are not permitted unless the seller has provided notification and obtained the consumer's written consent before *any* payment has been made. Violations of sections 399.84(a), 399.88 and 399.89 (and the previous full-fare rule, section 399.84) constitute an unfair and deceptive practice and unfair method of competition in violation of section 41712. The Enforcement Office investigation of Voyager Travel found violations under the rules in effect before and after January 26, 2012.

Background and Relevant Facts

Voyager Travel, which ceased operations in 2013, was a ticket agent based in Utah, specializing in offering travel packages that included, among other things, airfares and hotel accommodations.⁶ During the time period at issue in this order, Mr. Mickelsen exercised primary control and direction over all of the activities of Voyager Travel. Voyager Travel promoted its air travel packages through e-mail solicitations, subscriptions, and advertisements that were published on its web sites, including www.lds.travel and www.voyager.travel, and others, until the company changed ownership, and ultimately went out of business. For a significant period of time beginning in January 2011, Voyager Travel published daily advertisements for the "Restoring Courage 2012 Tour" to Israel on its own and other web sites, and in radio and television advertising, promoting air tour packages, combining air fares, hotel, land tours, and related amenities.⁷ However, the prices advertised by Voyager Travel for its air

⁵ See also *GTS Globotours, supra*; *Bloomspot, supra*; *British Airways, supra*; *Lion World Travel d/b/a South African Airways Vacation*, Order 2010-9-5 (Sept. 3, 2010); and *Unique Vacations, Inc.*, Order 2010-11-7 (Nov. 8, 2010).

⁶ Other air tour packages included cruises, guided tours, specially chosen leaders and scheduled events, and related amenities, and traveled particularly to Israel, Jordan, the Mediterranean, the British Isles, and other countries in Europe, and areas of the United States.

⁷ The Restoring Courage tour was scheduled to depart on August 11, 2011. As late as July 21, 2011, Voyager Travel mailed a demand that the Israel tour passengers pay an additional fuel surcharge, and included a copy of "Terms and Conditions, Restoring Courage Tour 2011" which stated: "Voyager Travel reserves the right to bill you for any increase in trip cost due to fees imposed beyond our control, including, but not limited to, airline fuel surcharges and increased security in Israel." This practice was not permitted under Department enforcement policy even before the January 24, 2012, effective date of the regulations prohibiting post-purchase price

package tours did not indicate that numerous significant restrictions applied. The advertised prices were "cash only" prices, based on double occupancy. Mandatory service, booking and insurance fees were not originally included. Voyager Travel also improperly imposed additional charges after full payment was made without prior disclosure or obtaining written permission. The Voyager Travel web site disclosed some information warning a consumer that a subsequent fuel or security surcharge might be imposed, but only if the consumer scrolled past the tour advertisements' main pages to a group of subtitled hyperlinks listed in the fine print area, and clicked the link, "Terms and Conditions." When selected, that hyperlink carried the consumer to another page where Voyager Travel disclosed for the first time that under the applicable Terms and Conditions, fuel surcharges might be added to the trip cost and were subject to increase even after final payment. During 2012 and early 2013, the air tour advertisements on Voyager Travel web sites still included similar violative provisions. For example, the web sites stated: "We include known Fuel Surcharges in our pricing. However, Fuel Surcharges are unpredictable and subject to increases even after final payment." Such practices constitute violations of 14 CFR 399.88 and 399.89.

The air tour package advertisements on Voyager Travel's own and third-party web sites failed to comply with the Department's full-fare advertising rule, 14 CFR 399.84, prior to the January 26, 2012, revision. Subsequently, the advertisements failed to comply with 14 CFR 399.84(a), 399.88, and 399.89. In addition to violating Part 399, such practices constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Statement in Mitigation

In mitigation and explanation, Voyager Travel and Mr. Mickelsen state that they did not intend to violate the Department's full-fare advertising rules. They further state that the ticket agent held itself to high standards and tried to tailor its business practices to be in compliance with all applicable regulations. Moreover, its policies and practices were designed, the company and Mr. Mickelsen add, to comport with existing rules and regulations to the extent that they were able to inform themselves of them. When a fuel surcharge that the company had not anticipated was imposed by an air carrier with which it was dealing, the ticket agent asserts that it had no choice but to pass it on to the traveler. Voyager Travel and Mr. Mickelsen explain that the company adopted the same approach by adding mandatory insurance premiums after an experience in which hundreds of members of a tour group were held over in airports for several days. The restriction of the air tour prices to cash only, arose, according to the company, in response to competition with other local ticket agents that were demanding a substantial credit card convenience fee to cover their costs. Voyager Travel and Mr. Mickelsen explain that they elected to add the fee even though it had not been disclosed up front, because it was subsequently needed to cover extra costs that were imposed on the firm. Voyager Travel

increases; *see Grand Circle Travel Corp.*, Order 2006-7-23 (July 20, 2006); *Trafalgar Tours West*, Order 2007-8-24 (August 24, 2007). In its responses, Voyager Travel reported that 732 people traveled on the tour, of which 697 participants paid the violative fuel surcharge.

and Mr. Mickelsen further state that they undertook the process of altering the web site to reflect the changes that the Department indicated were necessary. Mr. Mickelsen likewise assures the Enforcement Office that should he engage in air transportation in the future, he will ensure that any restrictions or additional costs will be advertised and disclosed to the passenger in full accordance with the Department's then-effective regulations.

Findings and Decision

The Enforcement Office has carefully considered all of the information available to it, including that provided by Voyager Travel, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Voyager Travel and Brian Mickelsen, in his personal capacity, have reached a settlement in this matter. While neither admitting nor denying the above allegations, Voyager Travel and Mr. Mickelsen accept the findings and conclusions stated herein and agree to cease and desist from further violations of 14 C.F.R. 399.84(a), 399.88, and 399.89, and 49 U.S.C. § 41712. Mr. Mickelsen also agrees to cease and desist from engaging in air transportation operations as an owner, director, or member of a LLC, ticket agent, air carrier or foreign air carrier, or agent of either, for ten years in order to avoid potential litigation.

Under this order, Voyager Travel LLC and Brian Mickelsen, in his personal capacity, are assessed \$20,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Failure to obey the cease and desist or payment provisions may subject Voyager Travel LLC and Brian Mickelsen, in his personal capacity, to additional enforcement action for the failure to comply with this order. The Enforcement Office believes that the assessment of a civil penalty of \$20,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to unlawful conduct in the future by Voyager Travel LLC, Mr. Mickelsen, and other sellers of air transportation.

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

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 prior to January 26, 2012, Voyager Travel LLC, d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, violated 14 CFR 399.84, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the

passenger to the company for certain air tours and by requiring payment of additional fees and charges after the passenger had paid the advertised price;

3. We find that after January 26, 2012, Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, violated 14 CFR 399.84(a), 399.88 and 399.89, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the company for certain air transportation, and by requiring payment of additional fees and charges after the passenger had paid the advertised price;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Voyager Travel LLC, formerly d/b/a LDS Travel, and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
5. We find that Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, were at all times relevant herein under the leadership, direction and control of Brian Mickelsen with respect to the conduct described in ordering paragraphs 2 and 3, and that he is personally responsible for the violations found in those paragraphs;
6. We order Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, and all other entities owned and controlled by, or under common ownership and control with Voyager Travel LLC, d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84(a), 399.88, and 399.89 and 49 U.S.C. § 41712;
7. We order Brian Mickelsen, in his personal capacity, to cease and desist for a period of 10 years from the date of the issuance of this order from engaging in air transportation as an owner, director, member of an LLC, or a manager, a ticket agent, or air carrier or foreign air carrier;
8. Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, are assessed jointly and severally \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 of this order. Of this total penalty amount, \$2,750 shall be due and payable within 60 days of the date of issuance of this order. Five additional payments of \$1,450 each shall be due as follows: February 1, 2015, June 1, 2015, October 1, 2015, January 1, 2016, and April 1, 2016. The remaining \$10,000 shall become due and payable immediately if Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, or Brian Mickelsen, in his personal

capacity, violates this order's cease and desist provision within twenty-one months following the date of issuance of this order, or fails to comply with the order's payment provisions;

9. Failure to pay the compromise assessment as ordered shall subject Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible further enforcement action for failure to comply with this order; and
10. We order Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen, in his personal capacity, to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made 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 unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE A. WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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