



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

Issued by the Department of Transportation
On the 25th day of February 2009

Liberty Travel Inc.

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

**Served: February 25, 2009
Docket OST 2009-0001**

CONSENT ORDER

This consent order concerns print and website advertisements by Liberty Travel Inc. (“Liberty”), a ticket agent, that failed to comply with the Department’s rule on full fare advertising, 14 CFR 399.84, and the related statute, 49 U.S.C. § 41712(a), which prohibits unfair and deceptive practices. This order assesses a compromise civil penalty of \$55,000 and directs Liberty to cease and desist from future similar violations.

To ensure that consumers receive accurate and complete information on available air fares, section 399.84 of the Department’s rules (14 CFR 399.84) requires that fare advertisements by air carriers and ticket agents state the full price to be charged the consumer. This requirement extends to advertisements on Internet sites. Under its enforcement case precedent, the Department has allowed certain government taxes and fees to be stated separately in fare advertisements, provided that the consumer is informed of these charges in conveniently accessible text.¹ However, the Federal excise tax of 7.5%, an *ad valorem* tax, must be included in initial fare quotes appearing on a company’s website and fares quoted in any print advertisements.

Liberty advertised airfares on its Internet website, www.Liberty.com, during part of 2008 that failed to include the 7.5% excise tax in its initial displays. The inclusion of the tax did not occur until the latter stages of the website booking process. In addition, Liberty failed to provide adequate notice of government taxes and fees that may properly be excluded from the fare. In this regard, Liberty requires consumers to navigate through

¹ Fees or charges may be listed separately, under Department precedent, provided that they 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. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. On Internet displays, these charges may be noted through a prominent link, placed adjacent to the stated fare, which takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.

two hyperlinks to reach a statement of government-imposed taxes and fees. With regard to Liberty's print advertisements, Liberty's newspaper advertisements stated that "[a] federal excise tax of 7.5% or segment fee of up to \$3.50 USD per segment applies." By failing to include the 7.5% excise tax in the advertised price that a consumer must pay, and failing to adequately disclose taxes and fees that may properly be stated separately from the advertised fare, Liberty violated 14 CFR 399.84 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712. Moreover, Liberty committed similar violations in 2003 that were settled by issuance of a consent order directing Liberty to cease and desist from further violations of section 399.84 and section 41712. See *Liberty Travel Inc.* Order 2003-7-19 (July 14, 2003). Liberty's 2008 advertisements also violate that order.

In mitigation, Liberty states that it is committed to fully complying with the Department's policies and rules with respect to the disclosure of taxes in Liberty's advertisements, and any past non-compliance was not intentional. Liberty states that there have been dramatic changes in management and personnel since 2003, and any inconsistency between Liberty's policies and practices in its advertising was in no way intended to mislead customers. Liberty also notes that it has not received any complaints from customers regarding Liberty's print or internet advertisements.

Moreover, Liberty maintains that since this matter has come to the attention of management, it has worked promptly and diligently to revise the content of its web site and its newspaper and other print advertisements in order to ensure full compliance with the Department's full-fare advertising rule. Finally, Liberty states it has introduced a series of internal oversight procedures to ensure that fare advertising problems do not occur in the future.

The Aviation Enforcement Office has carefully considered all of the facts of this case, including the information provided by Liberty 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, 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 \$55,000 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 Liberty, 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. violated 14 CFR 399.84 in the advertisements referred to above by failing to state the entire fare to be paid;

3. We find that by engaging in the conduct described in paragraph 2 above, Liberty Travel Inc. engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We find that by engaging in conduct described in paragraphs 2 and 3 above, Liberty Travel Inc. violated Department Order 2003-7-19;
5. Liberty Travel Inc. its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712(a) and Department Order 2003-7-19;
6. Liberty Travel Inc. is assessed \$55,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4. Of this total penalty, \$27,500 shall be due and payable within 30 days of the effective date of this order. The remaining \$27,500 shall become due and payable immediately if Liberty Travel Inc. violates this order's cease and desist provision within one year following the date of issuance of this order, or it fails to comply with the order's payment provisions;
7. Failure to pay the penalty as ordered shall subject Liberty Travel Inc. to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
8. 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)

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