



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

Issued by the Department of Transportation  
On the 2nd day of December, 2009

**Complaint of**

**Donald L. Pevsner v.  
Allegiant Air, LLC**

**Violations of 49 U.S.C. § 41712**

**Served December 2, 2009**

**OST 2009-0294**

**ORDER DISMISSING COMPLAINT**

On September 30, 2009, Donald L. Pevsner filed a document entitled an enforcement complaint against Allegiant Air, LLC (Allegiant), alleging that the carrier's advertising practices violated the statutory proscription against unfair and deceptive business practices, 49 U.S.C. § 41712. The complaint does not specifically cite that provision or any other statutory provision, or a specific Department regulation, nor does it specifically cite the Department's procedural rules in 14 CFR Part 302, which are applicable to formal third-party enforcement complaints. We will nonetheless treat the filing as a formal complaint filed under Part 302 and assume the complainant is referring to the general requirements of section 41712. We have decided to dismiss the complaint on its merits as raising, by inference, matters settled in the Department's consent order against the carrier, Order 2008-9-18.

The complaint alleges that the convenience fee that Allegiant assesses on all sales on its website should be included in the base fare quotation, since it does not resemble the taxes and fees that may be broken out under Department enforcement precedent. To assess a convenience fee for use of a carrier's website for booking purposes is, the complaint maintains, deceptive and an impermissible "unbundling" of the carrier's fees. In addition, the complaint alleges that the disclosure provided for the charge assessed for checked baggage, when checked at the time of boarding, is not adequate and would usually be overlooked by consumers. These practices, according to the complaint, should be enjoined by the Department.

In its answer, Allegiant states that it is in compliance with the terms of Order 2008-9-18, under which it made, at the insistence of the Aviation Enforcement Office, significant

revisions to its site to conform to 14 CFR 399.84. Those revisions, which remain in place, cause the first fare display screen to show a range of total fares, including the convenience fees and all other taxes and fees, in close proximity to the fare matrix. While the fare matrix does not include the convenience fee, Allegiant points out, the range of total fares stated below and on the same screen as the matrix meets the Department's requirement for full fare disclosure.

In our investigation of Allegiant's pricing and advertising practices in 2008, we raised the issues mentioned in the complaint with reference to an earlier version of the carrier's website.<sup>1</sup> As stated in Order 2008-9-18, we found that Allegiant fare displays, in their initial format which did not include the convenience fee, did not provide adequate disclosure. The carrier, as pointed out in its answer, as a consequence of our investigation, revised its display screens to include the convenience fee in a total fare placed in a box beneath its first screen fare matrix. We believed at the time, and reaffirm here, that the revised display meets the requirements of section 399.84 and is not unfair or deceptive.

With regard to the baggage fee policy, a recent review of the carrier's website disclosed that Allegiant places notices of its baggage charges both on its "tools" page as a "frequently asked question," and toward the end of the booking process before any charges are applied. This, we believe, is adequate notice to the public.

For the reasons stated above, we have decided to dismiss the complaint. We agree with the carrier that the Pevsner complaint raises no issues and cites no basis for disturbing the conclusions reached in our previous investigation.

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<sup>1</sup> By way of background, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged the consumer, with certain exceptions discussed in the Department's enforcement case precedent. Violations of the requirements of section 399.84, in addition, constitute unfair and deceptive trade practices and unfair methods of competition in violation of the requirements of 49 U.S.C. § 41712. ( See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc.*, Order 2009-11-8, *AHI Travel International Corp.*, Order 2008-3-5, *Grand Circle Corporation*, Order 2006-7-23, and orders cited therein, as well as the notice entitled, "Disclosure of Additional Fees, Charges and Restrictions on Airfares in Advertisements, Including 'Free' Airfares," dated September 4, 2003, and other guidance letters to the industry at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.)

ACCORDINGLY, I dismiss the third-party complaint in this docket.

This order is issued under authority assigned in 14 CFR 302.406(b) and shall be effective as the final action of the Department within 30 days after service.

By:

Samuel Podberesky  
Assistant General Counsel for  
Aviation Enforcement and Proceedings

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