



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

Issued by the Department of Transportation
On the Thirteenth day of July, 2012

Trip Advisor, LLC

**Violations of 49 U.S.C. § 41712 and
14 CFR 257.5 and 399.84(a)**

Docket OST 2012-0002

Served July 13, 2012

CONSENT ORDER

This consent order concerns Internet advertisements by Trip Advisor, LLC, d/b/a TripAdvisor (TripAdvisor) that (1) failed to comply with the Department's full-fare advertising requirements as specified in 14 CFR Part 399, and (2) failed to disclose code-share arrangements pursuant to the requirements specified in 14 CFR Part 257 and 49 U.S.C. § 41712(c). These failures constitute separate and distinct unfair and deceptive practices prohibited by section 41712(a). This consent order directs TripAdvisor to cease and desist from future violations of Parts 399 and 257 and section 41712 and assesses TripAdvisor a compromise civil penalty of \$80,000.

Applicable Law

TripAdvisor is a ticket agent¹ that arranges air transportation and is therefore subject to the advertising requirements of Part 399 of the Department's rules and the prohibitions of 49 U.S.C. § 41712 on engaging in unfair and deceptive practices and unfair methods of competition. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, 14 CFR 399.84(a) requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid by the consumer. Although

¹ A "ticket agent" is "a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation." 49 U.S.C. § 40102(a)(45).

charges included within the single total price listed, e.g., government taxes, may be described separately or through links or “pop ups” on websites that display the total price, such descriptions may not be false or misleading, may not be displayed as prominently as the total price, 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. Violations of section 399.84 also constitute violations of section 41712(a).

TripAdvisor is also subject to the detailed code-share disclosure requirements found in 49 U.S.C. § 41712(c) and Part 257. Under section 41712(c), ticket agents are required to disclose the name of the operating carrier providing the service for each segment of a passenger’s itinerary “on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.” Additionally, section 257.4 of the Department’s code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is unfair and deceptive 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.” Failure to disclose code-share arrangements pursuant to Part 257 and section 41712(c) constitutes an unfair and deceptive practice and unfair method of competition in violation of section 41712(a).

Facts and Conclusions

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by TripAdvisor with the Department’s full-fare advertising rule. From at least March 2012 through June 2012, TripAdvisor on its Internet website failed to display total fares more prominently than base fares, which excluded taxes and fees. Specifically, after consumers entered specific itineraries, Trip Advisor returned lists of flights in which the base fares were displayed in front of and in the same font size as the total fares.

The investigation also revealed a significant lack of compliance by TripAdvisor with section 257.5 of the Department’s code-share disclosure rule and 49 U.S.C. § 41712(c). From at least March through June 2012, TripAdvisor failed to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated on behalf of a major air carrier by a regional air carrier. Specifically, TripAdvisor did not display the corporate names of the transporting carriers and any other names under which those flights were held out to the public on its flight itinerary pages. As a result consumers were obliged to rely on a hover text feature to learn the identity of the airline that would actually operate the aircraft on which they would be flying.

Mitigation

TripAdvisor states that it did not consider itself to be a ticket agent within the meaning of 49 U.S.C. 40102 (a)(45) because of the circumstances surrounding its overall operation. TripAdvisor asserts that it does not itself sell any tickets to consumers. Rather, according to TripAdvisor, site visitors must purchase tickets from airlines and online travel agents, which its site visitors select from an array of options offered by TripAdvisor. TripAdvisor further explains that consumer ticket purchases are conducted on the Web sites of those airlines and online travel agents, not on TripAdvisor's Web site.

TripAdvisor states that the air transportation fee revenue that it earns from airlines and online travel agents is typically based on either the number of clicks made by the site visitor or on the number of completed ticket transactions reported by the airline or online travel agent. Therefore, TripAdvisor believes that it has only an attenuated financial relationship with the airlines and online travel agents for a significant number of ticket sales.

Because, the Enforcement Office has nonetheless concluded that the circumstances of TripAdvisor's current operation constitute those of a ticket agent, TripAdvisor states that it has revised its online site to comply with the regulations at issue and has elected for present purposes not to contest the conclusion concerning its ticket agent status. TripAdvisor, however, reserves the right to challenge that conclusion in the future.

Decision

The Enforcement Office has carefully considered the information provided by TripAdvisor and believes that enforcement action is warranted. The Enforcement Office and TripAdvisor have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, TripAdvisor consents to the issuance of this order to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR Parts 399 and 257 and to the assessment of \$80,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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 airfare advertising and code-share disclosure requirements.

This order is issued under the authority in 49 CFR 1.57a and 14 CFR 385.15.

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 Trip Advisor, LLC, violated 14 CFR 399.84(a) by failing to display total fares more prominently than base fares that excluded taxes and fees;
3. We find that Trip Advisor, LLC, violated 14 CFR 257.5(d) and 49 U.S.C. § 41712(c) by failing to disclose code-sharing arrangements;
4. We find that by engaging in the conduct and violations described in ordering paragraphs 2 and 3, above, Trip Advisor, LLC, engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);
5. We order Trip Advisor, LLC, and all other entities owned or controlled by, or under common ownership and control with Trip Advisor, LLC, their successors and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712, 14 CFR 399.84(a), and 14 CFR 257.5. Failure to comply with this cease and desist provision shall subject Trip Advisor, LLC, and its successors and assigns to further enforcement action;
6. We assess Trip Advisor, LLC, \$80,000 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, \$40,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$40,000, shall become due and payable if, within one year of the date of issuance of this order, Trip Advisor, LLC, violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Trip Advisor, LLC, may become subject to additional enforcement action for any violation of the order; and
7. We order Trip Advisor, LLC, to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Trip Advisor, LLC, 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:

SAMUEL PODBERESKY

**Assistant General Counsel for
Aviation Enforcement and Proceedings**

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