



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

**Issued by the Department of Transportation
on the 27th day of July, 2012**

Travelocity.com LP

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

Docket 2012-0002

Served July 27, 2012

CONSENT ORDER

This consent order concerns certain Internet advertisements by Travelocity.com LP (Travelocity) through its flexible dates tool that, for certain international searches, did not include fuel surcharges in the fare. The omission of fuel surcharges in advertised fares violates the full fare advertising requirements specified in 14 CFR 399.84 and the statutory prohibition against unfair and deceptive practices in the sale of air transportation, 49 U.S.C. § 41712. This consent order directs Travelocity to cease and desist from future violations of 14 CFR 399.84 and section 41712 and assesses the carrier a compromise civil penalty of \$180,000.

Applicable Law

Under 14 CFR 399.84, airfare advertisements by ticket agents must state the full fare charged the consumer. Failure to state the full fare in advertisements, in addition to violating the rule, constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712. Until recently, the Department permitted certain enforcement policy exceptions to the “full fare” advertising standard.¹ The Department had enunciated, through industry notices and in consent orders, an enforcement policy in which certain taxes and government fees could lawfully be stated separately from the base fare. Specifically, in accordance with its enforcement case precedent, the Department allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long

¹ 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 took effect on January 26, 2012, airlines and ticket agents must include all government imposed 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.

as the charges were levied by a government entity, were not *ad valorem* in nature, *i.e.*, they were collected on a per-passenger basis, and their existence and amount were clearly indicated in the advertisement so that the consumer could determine the full fare to be paid. On the other hand, ticket agent and air carrier-imposed fees, *e.g.*, surcharges for fuel, insurance, or other such costs, were required to be included in the advertised fare.

Background

An investigation in September, 2011, by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Travelocity with section 399.84 on its “flexible dates tool” airfare search path. Until the tool was disabled by Travelocity, the flexible dates tool failed to display the full fare for certain international airfares. Specifically, some advertised airfares did not include fuel surcharges, and as a result were displayed with, and ranked above, airfares that did include fuel surcharges.² According to Travelocity, its flexible dates tool was not capable of including certain carrier-imposed surcharges, such as fuel surcharges, applicable to some international airfares following a change in the amount or method of filing the surcharge, until after the first search using the flexible dates tool to search for a particular itinerary. Travelocity states that the problem occurred because carriers are not required to inform agencies of any changes to their surcharges. After the initial search, whether conducted by a consumer or Travelocity, Travelocity’s software would capture the carrier’s inclusion of a new surcharge on a filed fare and in future searches for the same city pair would include the full fare information.³ However, each time carriers added new surcharges or increased or decreased existing surcharges, those charges were not accurately reflected in some airfares advertised on the flexible dates tool until after at least one search for a particular itinerary had been conducted. Failing to include such carrier-imposed charges in the initial fare advertised violated the requirements of section 399.84.

Additionally, failing to include fuel surcharges in some, but not all, of the airfares advertised in the initial display of airfares resulted in airfares that did not include fuel surcharges being displayed above and more prominently than those airfares that did include fuel surcharges. The airfares appeared to be displayed from lowest to highest price for the selected city pair; however, the airfares that initially appeared to be the lowest price often had higher total airfares, when all surcharges, taxes, and fees were

² In search results displayed by the flexible dates tool, airfares were shown with a “plus” sign. Near the top of the screen another plus sign appeared next to the note “some taxes, additional fees apply,” hyperlinked to an explanatory screen. The additional charges listed there were a variety of U.S. and foreign per-person taxes that were permitted prior to January 26, 2012, to be broken out of the initially advertised base fare under Department precedent. However, in a number of sample searches for international airfares, the disparity between the first airfare displayed and the price ultimately displayed in the final steps prior to completion of a transaction was significantly higher than the total of the government imposed taxes that legitimately could have been broken out of the base fare. The large differences resulted from undisclosed fuel surcharges.

³ Travelocity states that it searched 245 top international city pairs on a daily basis to update its flexible dates tool.

included. In those instances, the carriers associated with the higher ranking airfares were deceptively depicted as having the lowest cost airfare. As a result, a consumer was likely to have initially selected an airfare that was not the lowest available airfare that met his or her needs or selected a carrier that was not the carrier he or she would have chosen if provided with more accurate information.⁴

After proceeding through the steps to select an itinerary and proceeding to the next page, the consumer had the opportunity to review his or her selection. For itineraries for which a paper ticket was required, it was only on this final page that the consumer was informed that the selected itinerary required a paper ticket, with a minimum additional delivery fee of \$29.95.⁵ A new total price was displayed. When the fuel surcharges and paper ticket fees were all included, in some cases the total amount for the airfare that was initially displayed as the lowest airfare was significantly higher than other airfares advertised less prominently in the same display.⁶

Since the initial fare display ranked airfares from the lowest airfare to the highest, those carriers whose fuel surcharges and paper ticket fees were not included in the airfare initially displayed outranked other carriers in the display, despite the fact that their total airfares may have been equal to, or greater than, those of other carriers. As a result of the display and selection process, the Enforcement Office believes that consumers likely purchased airfares on carriers and travel dates that were not the carrier or travel dates that best met their needs.

Mitigation

In mitigation, Travelocity states that it does not believe any of the above circumstances warrant enforcement action, and that the discrepancies identified above were limited and did not result in any consumer harm or deception. Moreover, Travelocity asserts that any alleged harm that may have occurred was greatly outweighed by what it claims to be the significant consumer benefits experienced by consumers. The flexible dates feature, in Travelocity's view, provided a valuable tool for consumers to use to search for airfares and save money. According to Travelocity, hundreds of thousands of consumers purchased their airfare using the flexible dates tool in a single year, saving more than \$35 million in the aggregate. Travelocity also maintains that its failsafe page, which provided

⁴ We note that, in most instances, the flexible dates tool displayed one or more alternatives to the consumer's chosen itinerary with a lower total airfare under the heading "Save" before a consumer completed a purchase. However, the alternatives were limited to the same dates as the itinerary selected by the consumer. Accordingly, the alternatives did not sufficiently guard against the possibility that a consumer might have chosen to travel at a lower fare on another date, another carrier, or both, if he or she had been provided accurate fare information on the first display of airfares.

⁵ Travelocity estimates that of all the air tickets sold on Travelocity, only 0.3% of them require paper tickets. A paper ticket is only required when, in a code-share arrangement, the marketing carrier and operating carrier do not have an e-ticket agreement in place. Due to the lack of agreement by the carriers, a paper ticket is issued to the passenger.

⁶ Additionally, in some cases, the same itinerary was available using different search tools on Travelocity or on other websites at a lower price and without the paper ticket related fee.

lower available fares for the itinerary and date selected provided an additional level of protection.

To address the Department's concerns, however, Travelocity states that it promptly disabled and removed from its website the flexible dates tool for both domestic and international itineraries. Travelocity believes that this is to the detriment of price-sensitive consumers who relied on Travelocity's efficient tool to search for and find the most affordable airfares between two cities during a certain time range.

Decision

The Enforcement Office has carefully considered the information provided by Travelocity but continues to believe that enforcement action is warranted. The Enforcement Office and Travelocity have reached a settlement of this matter in order to avoid the risks and costs of litigation. Without admitting or denying the violations described herein, Travelocity consents to the issuance of an order to cease and desist from future violations of section 41712 and 14 CFR 399.84, and to the assessment of \$180,000 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 Travelocity's size and sophistication. Additionally, it serves the public interest. It represents a strong deterrent to future noncompliance with the Department's airfare advertising requirements by Travelocity 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 Travelocity.com LP violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Travelocity.com LP also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. We order Travelocity.com LP, and all other entities owned or controlled by or under common ownership with Travelocity.com LP, and its successors and assignees, to cease and desist from violations of 49 U.S.C. 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Travelocity.com LP and their successors and assignees to further enforcement action;

5. We assess Travelocity.com LP a compromise civil penalty of \$180,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total assessed penalty, \$90,000 shall be due and payable within thirty days of the issuance of this order. The remaining \$90,000 shall be due and payable if Travelocity.com LP violates this order's cease and desist provisions within one year following the date of issuance of this order or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the \$90,000 assessed penalty shall become due and payable immediately; and
6. We order Travelocity.com LP 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. Failure to pay the penalty as ordered shall subject Travelocity.com LP 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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(SEAL)

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