



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

Issued by the Department of Transportation
On the Seventeenth day of September, 2012

Solar Tours, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR 257.5**

**Docket OST 2012-0002
Served September 17, 2012**

CONSENT ORDER

This consent order concerns Internet advertisements by Solar Tours, Inc., (Solar) that failed to disclose code-share arrangements as required by 14 CFR Part 257 and 49 U.S.C. § 41712(c). These failures also constitute separate and distinct unfair and deceptive practices prohibited by section 41712(a). The consent order directs Solar to cease and desist from future violations of Part 257 and section 41712 and assesses Solar a compromise civil penalty of \$30,000.

Applicable Law

Solar is a ticket agent¹ and is therefore 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

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).

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 as required by 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 Solar with section 257.5 of the Department’s code-share disclosure rule and 49 U.S.C. § 41712(c). For a period of time during 2012, on its Internet website, Solar 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, Solar did not display the corporate names of the transporting carriers and any other names under which those flights were held out to the public during the flight selection and booking process. As a result consumers were unable to learn the identity of the airline that would actually operate the aircraft on which they would be flying.

Mitigation

In mitigation Solar states that its website, www.flycheapabroad.com, was commercially irrelevant to the company, was not promoted and is now disabled. Solar explains that because it viewed this website as insignificant, its information technology team did not make changes to the www.flycheapabroad.com website when it performed the upgrades that allowed the company’s other websites to properly display code-share flights.

Decision

The Enforcement Office has carefully considered the information provided by Solar and believes that enforcement action is warranted. The Enforcement Office and Solar have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Solar consents to the issuance of this order to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR Part 257 and to the assessment of \$30,000 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 code-share disclosure requirements.

This order is issued under the authority contained in 49 CFR Part 1.

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 Solar Tours, Inc., violated 14 CFR 257.5(d) and 49 U.S.C. § 41712(c) by failing to properly disclose code-sharing arrangements;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Solar Tours, Inc., engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);
4. We order Solar Tours, Inc., and all other entities owned or controlled by, or under common ownership and control with Solar Tours, Inc., their successors and assignees, to cease and desist from further similar violations of 49 U.S.C. § 41712, and 14 CFR 257.5. Failure to comply with this cease and desist provision shall subject these entities to further enforcement action;
5. We assess Solar Tours, Inc., \$30,000 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, \$15,000, shall be due and payable as follows: \$5,000 shall be due and payable within 15 days of the date of issuance of this order, and two additional payments of \$5,000 each shall be due and payable on December 15, 2012, and March 15, 2013. The remaining portion of the civil penalty amount, \$15,000, shall become due and payable if, within one year of the date of issuance of this order, Solar Tours, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Solar Tours, Inc., may become subject to additional enforcement action for any violation of the order; and
6. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Solar Tours, 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:

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