



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

Issued by the Department of Transportation
On the Thirty-First day of July, 2013

Bloomspot, Inc.

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

Docket OST 2013-0004

Served July 31, 2013

CONSENT ORDER

This consent order concerns Internet advertisements and e-mail solicitations by Bloomspot, Inc. (Bloomspot) that violate the advertising requirements specified in 14 CFR 399.84(a), as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs Bloomspot to cease and desist from future violations of section 399.84 and section 41712, and assesses the ticket agent a compromise civil penalty of \$20,000.

Applicable Law

As a ticket agent,¹ Bloomspot is subject to 49 U.S.C. § 41712 and 14 CFR 399.84(a). Section 399.84(a) requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid in order to ensure that consumers are not deceived and are given accurate and complete fare information on which to base

¹ A "ticket agent" is defined as "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). Bloomspot is a ticket agent because it receives compensation for selling and arranging for the sale of air transportation.

their airline travel purchase decisions.² A double occupancy requirement for a tour package that includes air is in effect an element of the fare and must be disclosed.³ In the view of the Office of Aviation Enforcement and Proceedings, disclosure should be prominent and proximate to the advertised price to avoid a violation of 399.84(a); otherwise it would appear that the advertised price was available to individual consumers traveling alone when in fact it is not. Failure to adequately disclose the total price for tour packages including air violates 14 CFR 399.84(a). A violation of section 399.84(a) also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Facts and Conclusions

For a period of time in late 2012, on its website and by email, Bloomspot promoted air-inclusive tour packages that failed to meet the requirements of 14 CFR 399.84(a). For example, Bloomspot sent an e-mail to its subscribers promoting a Highlights of Egypt tour with a stated price of “\$2,877 for 7-day Highlights of Egypt tour (\$4,795 value).” Clicking on the “Read more” and “SEE OFFER” links in the e-mail directed consumers to a “Primary Offer” landing page that stated: “\$2,877* for 7-day Highlights of Egypt tour (\$4,795 value)”. On the same webpage under the heading “*The Details*” an additional disclosure noted that the “Rate is per person but based on double-occupancy: \$450 single-occupancy fee for solo travelers will be collected upon booking.”

The Highlights of Egypt tour promoted in an e-mail to subscribers also appeared on a webpage on the Bloomspot website. Like the e-mail advertisement, there was no disclosure of the double occupancy requirement on the Bloomspot webpage promoting the Highlights of Egypt tour. Consumers who viewed the promotion on the Bloomspot webpage had to click an arrow to be directed to the “Primary Offer” landing page that disclosed the double occupancy requirement and single-occupancy fee. The failure to adequately disclose the double occupancy requirement (1) in email solicitations and (2) on the first webpage advertising the air-inclusive tour package violates section 399.84(a) and constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Mitigation

In response to the DOT’s allegations Bloomspot stated that it had only recently entered the prepaid merchant offer business and then only very rarely (about 1 percent of the time) sent any solicitations to its subscribers for air/ground accommodations. Bloomspot

² Although charges included within the single total price listed, e.g., government taxes, may be stated separately on a webpage displaying the total price or through a link or “pop up,” such charges 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.

³ *Destination Southern Africa, Inc., and Destination Southern Africa, Inc. d/b/a South African Airways Vacations*, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2011-10-11 (Oct. 24, 2011); *Lion World Travel Ltd. d/b/a South African Airways Vacations*, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84, Order 2010-9-5 (Sept. 3, 2010).

noted that all significant tour package restrictions, including double occupancy, were disclosed on the landing page that was linked from the “Read more” and “SEE OFFER” hyperlinks on the face of the e-mail and linked from the arrow found on the webpage advertisement. Bloomspot observed that a subscriber could not book the offered package without first landing on the “Primary Offer” page (via a hyperlink) on which all significant restrictions were disclosed. Nonetheless, without admitting any violations Bloomspot has agreed to settle this matter based on its view that settlement is in the best interests of both parties.

Decision

The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Bloomspot and continues to believe that enforcement action is warranted. The Enforcement Office and Bloomspot have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Bloomspot consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$20,000 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 advertising requirements.

This order is issued under the authority 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 Bloomspot, Inc. violated 14 CFR 399.84(a) by advertising tours including air transportation that failed to properly disclose significant restrictions that affected the price paid by consumers;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Bloomspot, Inc. engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Bloomspot, Inc. to cease and desist from further such violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Bloomspot, Inc. to further enforcement action;
5. We assess Bloomspot, Inc. \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described above; of this amount, \$10,000 shall be payable within thirty days of the issuance of this order and the remainder

shall only become due and payable if Bloomspot, Inc. violates this order's cease and desist provision within 12 months following the date of issuance of the order or it fails to comply with the Order's payment provision; and

6. We order Bloomspot, Inc. 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 Bloomspot, 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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