



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

Issued by the Department of Transportation  
On the Twentieth day of August, 2013

**Hipmunk, Inc.**

**Violations of 14 CFR 257.5(d) and 399.85(b) and  
49 U.S.C. § 41712**

**Docket OST 2013-0004  
Served August 20, 2013**

**CONSENT ORDER**

This order concerns violations by Hipmunk, Inc., (Hipmunk) of 14 CFR 257.5(d) and 399.85(b) and the statutory prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712. It directs Hipmunk to cease and desist from future similar violations and assesses the ticket agent \$30,000 in civil penalties.

**Applicable Law**

Hipmunk is a ticket agent<sup>1</sup> that arranges air transportation and is therefore subject to detailed code-share disclosure requirements found in 49 U.S.C. § 41712(c) and 14 CFR 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." Failure to disclose the required information is an unfair and deceptive practice in violation of section 41712(a). In addition, 14 CFR 257.4 of the Department's code-share disclosure rule states that the holding out or sale of

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<sup>1</sup> 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).

scheduled passenger air transportation involving a code-sharing arrangement is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712, unless, in conjunction with that holding out or sale, the ticket agent follows certain 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.” Violations of section 257.5(d) constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Hipmunk is also subject to the baggage fee disclosure requirements of 14 CFR 399.85(b), which direct ticket agents to clearly and prominently disclose that additional fees for baggage may apply on the first screen in which the ticket agent offers a fare quotation for a specific itinerary selected by a consumer. The disclosure must indicate where consumers can view the applicable baggage fees. A ticket agent may refer consumers to airline websites where specific baggage fee information may be obtained or elsewhere on its own site if it displays airlines’ baggage fees. This rule, which entered into effect on January 24, 2012, ensures that consumers are not deceived and are given accurate and complete information on which to base their travel purchase decisions. Violations of section 399.85(b) constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

### **Facts**

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Hipmunk with 14 CFR 257.5(d) and 49 U.S.C. § 41712(c). On its Internet website, [www.hipmunk.com](http://www.hipmunk.com), Hipmunk failed to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated by a regional air carrier on behalf of a major air carrier. Specifically, Hipmunk 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 unable to learn, at an early stage of the booking process, the identity of the airline that would actually operate the aircraft on which they would be flying. By failing to properly disclose such code-share arrangements, Hipmunk violated 14 CFR 257.5(d) and 49 U.S.C. § 41712.

The investigation also revealed a lack of compliance by Hipmunk with section 399.85(b). Specifically, on the first screen in which a fare quotation for a specific itinerary is offered to consumers, Hipmunk failed to clearly and prominently disclose that additional fees for baggage might apply and where consumers could view the applicable baggage fees. By failing to properly disclose baggage fee information, Hipmunk violated 14 CFR 399.85(b) and 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Hipmunk states that at the time the violations occurred, it did not consider itself to be a ticket agent within the meaning of 49 U.S.C. § 40102(a)(45) because it does not sell any tickets to consumers, or hold itself out as selling, providing, or arranging for air transportation; rather, visitors to hipmunk.com must purchase tickets directly from the participating airlines. Hipmunk states that because the Enforcement Office has nonetheless concluded that Hipmunk's operations constitute those of a ticket agent, Hipmunk has revised its website to comply with the Department's code-share disclosure and baggage fees notice requirements and for present purposes will not contest the conclusion concerning its ticket agent status. Hipmunk, however, reserves the right to challenge that conclusion in the future.<sup>2</sup>

Hipmunk states that prior to the Department's review, baggage fees and code-share disclosures appeared on its website or the websites of carriers. Hipmunk asserts that it found it difficult to modify its site to fully comply with the Department's regulations due to the site's unique presentation. Hipmunk states that, nevertheless, it was highly responsive to the Department during its investigation, providing a number of drafts of enhanced disclosures to comply with the Department's regulations. Hipmunk notes that it has not received a single consumer complaint concerning these matters.

Hipmunk further explains that it was not able to display code-share information for a small minority of itineraries because of deficiencies in the code-share data provided by data partners on whom Hipmunk is dependent for such information. Hipmunk states that due to the small number of itineraries not showing code-share information, it was unaware of the issue until it received notice from the Department. Hipmunk states that upon receiving notice, it promptly worked with its data partners so that code-share information was shown for all itineraries. Hipmunk states that it will improve the monitoring of its website and its data feeds to ensure that it displays code-share information.

### **Decision**

The Enforcement Office has carefully considered the information provided by Hipmunk, but continues to believe enforcement action is warranted. The Enforcement Office and Hipmunk have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Hipmunk consents to the issuance of this order to cease and desist from future violations of 14 CFR 257.5(d), 14 CFR 399.85(b), and 49 U.S.C. § 41712, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Hipmunk and other ticket agents.

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<sup>2</sup> The Enforcement Office believes that Hipmunk arranges for the sale of air transportation and it receives commissions for doing so and therefore is a ticket agent covered by the Department's rules.

This order is issued under the authority contained in 14 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 Hipmunk, Inc., violated 49 U.S.C. § 41712(c) and 14 CFR 257.5(d) by failing to disclose code-share arrangements as required;
3. We find that Hipmunk, Inc., violated 14 CFR 399.85(b) by failing to clearly and prominently disclose on the first webpage of its website in which it offered a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers could view the applicable fees;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Hipmunk, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Hipmunk, Inc., its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with Hipmunk, Inc., its successors, its affiliates, and its assigns to cease and desist from further similar violations of 14 CFR 257.5(d), 14 CFR 399.85(b), and 49 U.S.C. § 41712;
6. We assess Hipmunk, Inc., \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4, above. Of this total penalty amount, \$15,000 shall be due and payable within thirty (30) days of the date of this issuance of this order. The remaining portion of the civil penalty amount, \$15,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Hipmunk, Inc., violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Hipmunk, Inc., may be subject to additional enforcement action for violation of this order; and
7. We order Hipmunk, 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 Hipmunk, 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**  
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