



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

Issued by the Department of Transportation
on the 4th day of March, 2016

Porter Airlines, Inc.

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

Docket DOT-OST-2016-0002

Served March 4, 2016

CONSENT ORDER

This order concerns violations by Porter Airlines, Inc., (Porter Airlines) of 14 CFR 399.84(a) and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. This order directs Porter Airlines to cease and desist from future similar violations, and assesses the carrier \$40,000 in civil penalties.

Applicable Law and Facts

Advertisements

Porter Airlines is a Canadian air carrier based in Toronto, operating scheduled service to various destinations in the United States. Because Porter Airlines markets air transportation to consumers in the United States, the carrier is subject to the advertising requirements of 14 CFR Part 399. Specifically, 14 CFR 399.84(a) provides: “The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire

price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component.” The purpose of section 399.84(a) is to ensure that consumers are not deceived and are given accurate and complete information on which to base their airline travel purchase decisions.

In 2014, Porter Airlines’ website displayed banner advertisements with the heading “Porter Escapes.” The advertisements offered air transportation on Porter Airlines from a U.S. city to a city in Canada, along with a hotel stay. The advertisements displayed a price per person “+ tax.” Clicking on this banner advertisement led the consumer to the website for Porter Escapes, Inc.¹ This site, www.porterescapes.com, advertised air transportation and hotel packages from U.S. cities to Canadian destinations, with prices listed “per traveler plus tax.” Porter Airlines also sent emails to U.S. consumers containing similar advertisements for Porter Escapes tour packages. These email and web-based advertisements violated 14 CFR 399.84(a) and 49 U.S.C. § 41712 because they did not state the entire price to be paid by the consumer.

Mitigation

In mitigation, Porter Airlines states that it is fully committed to compliance with the Department’s consumer protection rules and that Porter has no enforcement history with the Department. Porter Airlines further states that upon learning of the Department’s concerns, Porter Airlines took immediate and comprehensive remedial action to update its website. Porter Airlines claims that it did not receive any consumer complaints about the matters raised during the Department’s inquiry, and that it never intentionally violated the Department’s rules or intended to mislead customers. Porter Airlines also provided vouchers to affected passengers. Porter Airlines points out that at all times it actively and promptly cooperated with the Department.

Decision

The Enforcement Office has carefully considered the information provided by Porter Airlines, but continues to believe that enforcement action is warranted.

In order to avoid litigation, Porter Airlines has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Porter Airlines to cease and desist from future similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712, and assessing \$40,000 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 as a deterrent to Porter Airlines and other carriers.

¹ Porter Escapes, Inc., is a corporation selling pre-packaged tour products, all of which include air travel with Porter Airlines. Porter Airlines and Porter Escapes are wholly-owned subsidiaries of Porter Aviation Holdings, Inc., a Canadian holding company, and are affiliates of each other. For a related consent order involving Porter Escapes, see DOT Order 2016-XX-XX.

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 Porter Airlines, Inc., violated 14 CFR 399.84(a) by displaying advertisements by email and on its website that failed to state the entire price to be paid by the consumer;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Porter Airlines, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Porter Airlines, Inc., its successors, its affiliates, and all other entities owned by, or controlled by Porter Airlines, Inc., its successors, its affiliates, and its assigns, to cease and desist from further similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712;
5. We assess Porter Airlines, Inc., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above:
 - a. \$11,000 of the assessed penalty shall be due and payable within thirty (30) days of the date of this order;
 - b. \$19,000 of the assessed penalty shall be credited to Porter Airlines, Inc., for compensation provided to affected consumers;² and
 - c. the remaining portion of the assessed civil penalty, \$10,000, shall become immediately due and payable if, within one year of the service date of this order, Porter Airlines, Inc., violates this order's cease and desist or payment provision; and
6. We order Porter Airlines, 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 Porter Airlines, 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.

² The credit is based on 80% of the value (in USD) of vouchers issued by Porter Airlines and Porter Escapes to affected consumers in January 2016.

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.

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

An electronic version of this document is available at
www.regulations.gov