



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

**Issued by the Department of Transportation
On the 28th day of May, 2010**

FarePortal, Inc.

Docket OST 2010-0005

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

Served May 28, 2010

CONSENT ORDER

This consent order concerns Internet advertisements by FarePortal, Inc., (FarePortal) that violate the full fare advertising requirements specified in 14 CFR Part 399 and a statutory prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712. The order directs FarePortal to cease and desist from further such regulatory and statutory violations and assesses FarePortal a \$50,000 civil penalty in compromise of penalties otherwise due and payable.

FarePortal is a travel agent that sells air transportation, primarily through its Internet website. Engaging in such conduct subjects it to the Department's jurisdiction, including 49 U.S.C. § 41712 and 14 CFR 399.84. Under 14 CFR 399.84, the Department's full-fare advertising rule, fare advertisements by air carriers or their agents must state the full price to be charged to the consumer. Long-standing enforcement case precedent allows taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and international departure taxes, to be stated separately in advertisements, so long as the charges are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amount are clearly indicated at the first point a fare is presented so that consumers can easily determine the full-fare to be paid.¹

¹ The Department has issued over 100 cease-and-desist orders enforcing section 399.84 in this manner. *See, e.g., Liberty Travel Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-2-9 (February 25, 2009); *See also Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet*, January 18, 2001, at <http://airconsumer.ost.dot.gov/rules.htm>.

Carrier- or agent-imposed charges, however, may not be broken out of the advertised fare.² In Internet advertising displays, the full-fare may be stated on the first screen that provides fare quotes, or the existence of permissible separately-stated additional charges may be disclosed with a clearly and prominently presented hyperlink that takes consumers directly to the point on another page that shows the amounts of those charges.³ Fare advertisements that do not provide proper notice of taxes and fees at the first point a fare is presented or that exclude non-government imposed taxes and fees do not comply with section 399.84 or the Department's enforcement case precedent and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.⁴

FarePortal advertised fares on its Internet homepage, www.cheapoair.com, that did not contain appropriate notice of the amount or nature of additional taxes and fees that were excluded from the advertised fare at the *first* point in which it displayed fares by, among other things, excluding its "service fee" from those fares and not complying with the stringent conditions set forth in Order 2001-12-7 and the December 19, 2001, *Revised Enforcement Policy on Deceptive Practices Regarding Service Fees Charged by Travel Agents in the Marketing and Sale of Airfares to the Public Via the Internet*. By this conduct, FarePortal violated 14 CFR 399.84, and, in so doing, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In mitigation, FarePortal makes four points. First, FarePortal asserts that it has always provided consumers with the actual service fee and government tax and fee information in a manner that it believed, on advice of outside specialists, complied with the Department's enforcement guidance. Second, FarePortal states that on its itinerary display pages, consumers were provided a hyperlink to a pop-up containing the fully computed fare for each itinerary selected, inclusive of the carrier base fare and carrier charges, the service fee, and all government imposed, per passenger *ad valorem* and non-*ad valorem* fees and charges. Third, FarePortal states that it worked diligently with the Department's staff to resolve all the matters brought to its attention and made several changes to the information provided to consumers on its website. Fourth, FarePortal points out that it has not received any complaints from consumers regarding any lack of clarity of the website or the absence of any information presented relating to the matters that the Department has brought to FarePortal's attention.

² The Department permitted a limited exception, under an exemption issued to Orbitz, provided certain very stringent conditions are met, including that the total price, including all taxes, fees, and other charges, appears on the same screen with the fare. *Application of Orbitz, L.L.C. for an Exemption, to the Extent Necessary, Pursuant to 49 U.S.C. § 40109*, Order 2001-12-7 (December 7, 2001); *Revised Enforcement Policy on Deceptive Practices Regarding Service Fees Charged by Travel Agents in the Marketing and Sale of Airfares to the Public Via the Internet*, December 19, 2001, at <http://airconsumer.ost.dot.gov/rules/20011219.htm>.

³ See, e.g., *In the Matter of Hobbit Travel, Inc., Enforcement Proceeding*, OST Docket 2003-15034, Order 2003-6-16, (June 10, 2003).

⁴ See, e.g., *In the Matter of Roni Herskovitz, Individually, and Ultimate Fares, Inc., Enforcement Proceeding*, OST Docket 2009-0002, Order 2009-11-8 (Nov. 9, 2009).

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by FarePortal, Inc., but continues to believe that enforcement action is warranted. The Department views compliance with Part 399 seriously. The Enforcement Office and FarePortal, Inc., have reached a settlement of this matter in order to avoid litigation. FarePortal, Inc., without admitting the violations describe above, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and Part 399 of the Department's regulations, and to the assessment of \$50,000 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 an adequate deterrence to future noncompliance with the Department's advertising requirements by FarePortal, Inc., as well as by air carriers, travel agents, 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 FarePortal, Inc., violated 14 CFR 399.84 by failing to state the entire price to be paid by the consumer at the *first* point at which the fare is displayed and by causing to be published air fare advertisements that improperly excluded its service fee from advertised base fares, as described above;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, FarePortal, Inc., violated 49 U.S.C. § 41712;
4. We order that FarePortal, Inc., and all other entities owned or controlled by or under common ownership with FarePortal, Inc., and their successors and assignees, to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. We assess FarePortal, Inc., a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$25,000 is due and payable within 30 days of the date of issuance of this order. The remaining \$25,000 shall become due and payable if FarePortal, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and FarePortal, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject FarePortal, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

6. Payments shall be made by wire transfer through the Federal Reserve Communication System, commonly known as “Fed Wire,” to the account of the U.S. Treasury in accordance with the attached instructions.

This order will become a final order of the Department 30 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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