

Client Bulletin

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Dot Cracking Down On Deceptive Advertising Of Airline Fares

Following an announcement by the Department of Transportation (DOT) in September that it would not change its current rule and enforcement policy on airline price advertisingⁱ, the DOT recently issued two consent orders and fined China Airlines and Alitalia for failure to comply with the DOT's rule on full fare advertising, 14 CFR 399.84, finding that the airlines' fare displays constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. §41712. The DOT imposed fines of \$29,500 on each of the two air carriers, with half of the fine to be suspended for one year and then forgiven if the airlines do not violate the cease and desist orders.

The DOT's rule for advertised prices for air transportation requires that the airline, and its agents who conduct advertising on its behalf, list the entire amount that the customer will have to pay for the ticket. The DOT has taken the position that only government imposed taxes, fees and other charges may be listed separately from the listed fare, so long as those charges are collected on a per passenger basis, are not based on a percentage of the ticket price and are clearly disclosed in the advertisement.

Skyrocketing fueling costs and increased costs of airline security following September 11th have led airlines to impose separate surcharges on the cost of passenger tickets, such as fuel and security surcharges. Some carriers offered advertised fares which did not include the fuel surcharges or security surcharges but simply listed these as additional charges, together with the imposed taxes. The DOT has consistently taken the position that separately listing fuel surcharges and security surcharges violate the DOT's advertising rules, which require that the full price to be charged to the consumer be listed in the advertisement.

While these rules as applied to print advertising are fairly straightforward, the issue becomes more complicated when fare advertisements are put on the Internet and handled by agents for the airlines such as Travelocity.com, the agent for both Alitalia and China Airlines in the two recent orders issued by the DOT.ⁱⁱ

The China Airlines and Alitalia websites displayed fares which did not include insurance or fuel surcharges and which failed to appropriately list the additional taxes and fees payable on an airline ticket. It was only after a passenger had selected his itinerary and flights, and in some cases submitted personal data, that the website gave the full fare including surcharges.

Both Alitalia and China Airlines had sales agency relationships with Travelocity.com. Travelocity customarily listed the airline's fare offerings in a number of different formats including a "flexible fare finder" (FFFi) in which the consumer did not list the specific date on which he wished to travel, but rather requested the lowest published fare for various city pairs for future travel dates. In response to this consumer generated search, the computer then would give a fare quotation which omitted surcharges from the fare quotation. It was only after the consumer had selected a specific date of travel that the complete ticket cost would appear, including any surcharges for fuel and security.ⁱⁱⁱ

The DOT ruled that the display of fares depending on the method in which carriers elected to file surcharges was deceptive to consumers and provided an unfair competitive advantage to carriers filing in the flight specific format as opposed to the city pair format. Since Travelocity acted as the agent of the airlines in selling the tickets, the airlines were found to be jointly responsible for the advertising practices of Travelocity and, therefore, shared liability with Travelocity for the deficient fare displays. The DOT ordered air carriers to monitor

displays of fares on its websites to insure that their agents, as well as the airline themselves, complied with the DOT's rules concerning full fare advertising.

The DOT has consistently insisted on strict compliance with its advertising rules in both the print media and the Internet. In summary, the advertised price must be the full price that the consumer will pay. Otherwise, the DOT will consider this to be an unfair and deceptive practice and may bring an enforcement action against the offending airline and its agents.



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ⁱ See DOT Press Release 94-06, September 19, 2006.

ⁱⁱ Docket OST 2006-23528, served December 1, 2006.

ⁱⁱⁱ The DOT found that the FFFi search function of Travelocity violated the full fare advertising rules as well as 49 U.S.C. § 41712. See Order 2006-10-4.