



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

Issued by the Department of Transportation
on the 26th day of November, 2012

Travelzoo Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR 257.5**

**Docket OST 2012-0002
Served November 26, 2012**

CONSENT ORDER

This consent order concerns Internet advertisements by Travelzoo Inc. (Travelzoo) that violated 14 CFR Part 257 and 49 U.S.C. § 41712 by failing to properly disclose code-share arrangements. These failures also constitute separate and distinct unfair and deceptive practices prohibited by section 41712. This consent order directs Travelzoo to cease and desist from future violations of Part 257 and section 41712 and assesses Travelzoo a compromise civil penalty of \$50,000.

Applicable Law

Travelzoo is a ticket agent¹ that arranges air transportation and is therefore subject to the detailed code-share disclosure requirements found in 49 U.S.C. § 41712(c) and 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." Additionally, section 257.4 of the Department's code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-share arrangement is unfair and deceptive in violation of

¹ A "ticket agent" is "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).

49 U.S.C. § 41712, unless, in conjunction with that holding out or sale, the advertiser follows certain notice 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.” Failure to disclose code-share arrangements pursuant to Part 257 and section 41712(c) constitutes an unfair and deceptive practice and unfair method of competition in violation of section 41712(a).

Facts and Conclusions

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Travelzoo with 14 CFR 257.5(d) and 49 U.S.C. § 41712(c). For a period of time during 2012, on its Internet website www.fly.com, Travelzoo failed to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated on behalf of a major air carrier by a regional air carrier. Specifically, Travelzoo 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.

Mitigation

Travelzoo states that at the time the violations occurred, it did not consider Fly.com 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 Fly.com’s website must purchase tickets directly from the airlines or online travel agencies. Travelzoo states that because the Enforcement Office has nonetheless concluded that the circumstances of Travelzoo’s Fly.com operation constitute those of a ticket agent, Travelzoo has revised Fly.com’s website to comply with the code-share disclosure requirements and for present purposes not contest the conclusion concerning its ticket agent status. Travelzoo, however, reserves the right to challenge that conclusion in the future.²

Travelzoo further states that its Fly.com website did provide code-share information for the vast majority of itineraries displayed on Fly.com. Travelzoo explains that Fly.com was not able to display code-share information for a small minority of itineraries due to the lack of code-share information, or due to the manner in which code-share data was passed to Fly.com, from data partners that Fly.com is dependent on for such information.

² The Enforcement Office believes that fly.com arranges the sale of air transportation and it receives commissions for doing so and, therefore, is a ticket agent covered by the Department’s rules.

Travelzoo states that due to the small number of itineraries not showing code-share information, Fly.com was unaware of the issue until it received notice from the Department of Transportation. Travelzoo states that upon receiving notice, Fly.com promptly worked with its data partners so code-share information was shown for all itineraries. Travelzoo states that Fly.com will continue to monitor its website to ensure that it displays code-share information it receives from data partners.

Decision

The Enforcement Office has carefully considered the information provided by Travelzoo and believes that enforcement action is warranted. The Enforcement Office and Travelzoo have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Travelzoo consents to the issuance of this order to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR Part 257 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 a strong deterrent against future noncompliance with the Department's code-share disclosure requirements.

This order is issued under the authority contained 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 Travelzoo Inc. violated 14 CFR 257.5(d) and 49 U.S.C. § 41712(c) by failing to properly disclose code-sharing arrangements;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Travelzoo Inc. engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);
4. We order Travelzoo Inc., and all other entities owned or controlled by, or under common ownership and control with Travelzoo Inc., their successors and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 257.5. Failure to comply with this cease and desist provision shall subject these entities to further enforcement action;
5. We assess Travelzoo Inc. \$50,000 in civil penalties in compromise 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 shall be due and payable within 30 days of the date of issuance of this order. Any unpaid portion

of the civil penalty amount shall become due and payable immediately if, within one year of the date of issuance of this order, Travelzoo Inc. violates this order's cease and desist or payment provisions, in which case Travelzoo Inc. may become subject to additional enforcement action for any violation of the order; and

6. We order Travelzoo Inc. to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Travelzoo 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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