



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

Issued by the Department of Transportation
On the Fifteenth day of December, 2010

The COMM Group, Inc., Cheap
Caribbean, Inc.

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

Docket DOT-OST 2010-0005

Served December 15, 2010

CONSENT ORDER

This consent order concerns advertisements by The COMM Group, Inc., and Cheap Caribbean, Inc.¹ (collectively "Cheap Caribbean") that violate the Department's advertising requirements specified in section 399.84 of the Department's regulations (14 CFR 399.84) and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Cheap Caribbean to cease and desist from future violations and assesses the company compromise civil penalties of \$65,000.

Cheap Caribbean, as a ticket agent selling air tour packages, including air and hotel packages, is subject to the advertising requirements of Part 399 of the Department's rules. Under 14 CFR 399.84, any advertising that states a price for air transportation or an air tour is considered to be an unfair or 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 air carrier or ticket agent for such air

¹ Cheap Caribbean is a wholly-owned subsidiary of The COMM Group.

transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees imposed by a government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are indicated clearly in the advertisement so that the consumer can determine the full price to be paid.² Similar notice must be provided when air fares are held out as “free,” but government-imposed taxes and fees or other charges or surcharges must be paid by a passenger in order to utilize the “free” fare. Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised price, lest consumers be confused about the total amount that must be paid. On the other hand, carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, also must be included in the advertised price. With respect to airfares and air tours advertised on the Internet, taxes and fees that are permitted to be excluded from the advertised price may be noted in a prominent link, placed adjacent to the stated price the first time the price is shown, that takes the viewer to the bottom of the screen, or to a place on a separate screen, where the nature and amount of such taxes and fees are displayed.³

Cheap Caribbean specializes in offering travel packages, which include airfares, hotel accommodations, guided tours, and related amenities, particularly to the Caribbean Islands, Mexico, and Bermuda. Cheap Caribbean has promoted its airfares and air travel packages in the United States through e-mail solicitations, subscriptions, and advertisements that are published on its web sites, including www.CheapCaribbean.com,⁴ and related web sites.

² See, e.g., Costa Cruise Lines, N.V., Order 2009-9-3.

³ See, e.g., Unique Vacations, Inc., Order 2010-11-7, Prestige Cruise Holdings, Inc., Order 2010-4-1, JTB Corporation, Order 2008-12-24, Trafalgar Tours West, Order 2007-8-24, Grand Circle Travel Corp, Order 2006-7-23, JetBlue Airways, Inc., Order 2004-2-4, and orders cited therein, and the notice entitled: Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including “Free” Airfares, which is dated September 4, 2003, as well as guidance letters to the industry which can be found at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

⁴ The Department’s investigation revealed that during this time period, The COMM Group has maintained numerous other web sites, including www.commgrouppinc.com, www.caribbeanido.com, www.caribbeanhotdeals.com, www.interislandtours.com, www.hawaiianhotdeals.com, www.doorlando.com and www.cheapusagetaway.com. Customers on each of these sites are transferred to www.CheapCaribbean.com when they seek to purchase an advertised air tour package.

An investigation by the Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") disclosed that for a period of time, certain air fares and air tours promoted by Cheap Caribbean in its electronic solicitations and on its web sites did not comply with Department requirements. Specifically, the listed prices for the complete air packages failed to include all service surcharges, and appropriate notice of the existence, nature or amount of additional taxes and fees that are permitted to be stated separately from the base fare was not provided.

For example, in an Internet advertisement by Cheap Caribbean entitled "Ends Sunday, Villa Resorts All-inclusive Sale -- Los Cabos & Puerto Vallarta. Packages with Air from \$499," the text below the advertised fare described weather insurance and a \$100 back coupon, but no additional information was offered. Not until the investigating Enforcement Office staff member selected a hotel from a choice of three did she learn that the stated starting price of \$499 per person, was plus "applicable taxes and service."⁵

Further similar violations were found by Enforcement Office staff in other Cheap Caribbean promotions, e-mail solicitations, newsletters placed on the Internet, and web sites advertising its services.

Accordingly, the prices advertised on Cheap Caribbean's web site did not meet Department requirements. Failure to (1) provide appropriate notice on the screen or page where the cost of the overall trip is first revealed of the amount of government taxes and fees that are permitted to be broken out of the price that is displayed, and failure to (2) include service surcharges imposed by ticket agents, or other surcharges collected by Cheap Caribbean, in the advertised price of an air ticket or air tour package when it was first listed, violate the Department's regulations and enforcement case precedent. In addition to violating the requirements of section 399.84 and related Department precedent and enforcement policies, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Once a firm quotes through its advertising a specific price for a flight, tour or tour component, which properly includes all charges and surcharges, the firm must charge that price to the consumer. When an air tour seller advertises a

⁵ The listed prices did not include all surcharges, nor was the existence, nature or amount of additional taxes and fees properly disclosed in these solicitations. The additional text, when reached by a link, was in smaller, fine print appended to the package price, and stated "Final tax and service amounts at check-out include all applicable airline, hotel tax and service fees"

specific price for a flight, tour or tour component, it must have available a reasonable inventory at the advertised price for a reasonable time period. Fares and tour prices held out on the Internet, in newspapers or orally must be current and available.

In mitigation and explanation, The COMM Group, Inc., and Cheap Caribbean, Inc. state that they have fully cooperated in the investigation by the Department. Cheap Caribbean recalls that they instituted immediate action to correct those advertisements of fares on their many web sites that were not displayed in accordance with Department guidelines. The firm recounts that Cheap Caribbean's compliance efforts have also included instituting procedures and training their staff to ascertain before publication that all advertising fully meets Department rules and guidelines on an on-going basis. The violations cited in this consent order, Cheap Caribbean notes, constitute the first offense by Cheap Caribbean. Clearly, the firm asserts, there was no intent to defraud. Moreover, the firm recounts that it has not received any complaints from consumers regarding The COMM Group's Internet advertisements.

Since this matter has come to the attention of Cheap Caribbean's management, the firm explains, the company has worked promptly and diligently to revise the content of its web site and other electronic advertisements, instituting certain internal oversight procedures to ensure fare advertising is now displayed and will be displayed in the future in complete accordance with the Department's regulations, enforcement precedent and guidelines.

The Enforcement Office has carefully considered all of the information available to it, including that provided by The COMM Group and Cheap Caribbean, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Cheap Caribbean have reached a settlement in this matter. While neither admitting nor denying the above allegations, Cheap Caribbean accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Cheap Caribbean is assessed \$65,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this total penalty amount, \$32,500 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$32,500 amount shall become due and payable immediately if The COMM Group and Cheap Caribbean violate this order's cease and desist provisions within one year following the date of issuance of this order, or fail to comply with the order's payment provisions. Failure to pay the assessed penalty may subject Cheap Caribbean to additional enforcement action for the failure to comply

with this order. The Enforcement Office believes that the assessment of a civil penalty of \$65,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to unlawful conduct in the future by Cheap Caribbean 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 The COMM Group, Inc., and Cheap Caribbean, Inc. violated 14 CFR 399.84, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the firm for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, The COMM Group, Inc., and Cheap Caribbean, 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 The COMM Group, Inc., and Cheap Caribbean, Inc. and all other entities owned and controlled by, or under common ownership and control with The COMM Group, Inc., and Cheap Caribbean, Inc., and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. The COMM Group, Inc., and Cheap Caribbean, Inc. is assessed \$65,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Of this total penalty amount, \$32,500 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$32,500 shall become due and payable immediately if The COMM Group, or Cheap Caribbean violates this Order's cease and desist provisions within one year following the date of issuance of this order, or fail to comply with the order's payment provisions;

6. Failure to pay the compromise assessment as ordered shall subject The COMM Group, Inc., and Cheap Caribbean, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order;

7. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order; and

8. We order The COMM Group, Inc., and Cheap Caribbean, Inc. to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of air tours or air tour components they cause to be published in printed or electronic format or circulates as current during the last 20 days of the one-year period following the issuance of this order; and (b) printouts of screen displays advertising air tour prices on Internet sites within their control for the 15th day of each month during the one-year period following issuance of this order. This material shall be submitted within 15 days of the conclusion of the referenced one-year period.

This order will become a final order of the Department 10 days after its service 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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