



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

Issued by the Department of Transportation  
On the Twenty-First day of April, 2011

**Expedia, Inc.**

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

**OST-2011-0003**

**Served April 21, 2011**

**CONSENT ORDER**

This consent order concerns air fare advertisements by Expedia, Inc. (Expedia), that failed to provide the full fare or adequate notice of additional taxes and fees with respect to certain sale fares in violation of the Department's full-price advertising requirements, 14 CFR 399.84, and therefore constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. By this order, the Department directs Expedia to cease and desist from future similar violations and assesses \$29,000 in civil penalties.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents, including Internet fare displays, must state the full price charged the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel plans. Through its enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

In the context of website displays, the Department has made clear in a number of consent orders and notices to the industry its longstanding policy that taxes and fees that properly may be stated separately from the advertised fare may be noted through a prominent link adjacent to the stated fare. The link must advise the viewer that taxes and fees are extra and take the viewer to the bottom of the screen, or directly to a pop-up or a place on a separate screen, where the nature and amount of such fees are displayed. In a notice dated September 4, 2003, the Department stated that "Internet fare advertisements that quote a fare that is not a full fare or that has significant restrictions should have an explicit statement that additional charges apply immediately adjacent to the fare with a hyperlink

to a full explanation.” In addition, in a recent consent order, the Department reiterated that, in permitting Internet fare advertisers to disclose the taxes and fees through a hyperlink, the hyperlink must itself be clear and take the reader directly to a pop-up or the place on the linked screen where the required tax and fee disclosures are made. (*Delta Air Lines*, Order 2010-5-30).

With respect to the fare displays in question, which appeared intermittently on Expedia’s home page, next to an advertised fare Expedia placed a plus sign which was a hyperlink that led the consumer to a separate screen giving the required additional information. However, the plus sign itself had no text advising what the sign referred to. Absent such text, the most likely meaning of the plus sign to a reasonable consumer might be equivalent to advertising a fare as “from” a particular amount. A brief indicative phrase immediately adjacent to the sign, such as “taxes, fees additional,” would have been sufficient to alert consumers to the existence of added charges and the nature of the link. In the Expedia display, the explanatory text was relegated to a statement at the bottom of the page in question that required scrolling through at least one full screen before the reader found a hyperlinked statement that the plus sign “means taxes and fees are additional” which took the reader to a subsequent screen with details of those charges. The use of symbols without adjacent explanatory text does not comply with the full-price advertising requirements of section 399.84 of the Department’s rules and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Expedia states that it reasonably believed that the hyperlinking of the plus sign immediately adjacent to the fare obviated the need for the proximately located intermediary and hyperlinked phrase "+taxes and fees additional" and that the hyperlink connected second screen on which a full taxes and fees explanation appeared provided reasonable notice to its users. Expedia contends that its use of adjacent symbols and the location of its taxes and fees explanations was consistent with prevailing industry practice among a number of Expedia's major online travel agent competitors. Furthermore, Expedia states that it has no record of receiving any complaints about consumer confusion as a result of the manner in which Expedia displayed its taxes and fees explanations. Finally, Expedia states that it has clearly demonstrated its strong compliance commitment by immediately removing any fare promotion from its home page pending final resolution of the Department's inquiry and, after discussions with the Office of Aviation Enforcement and Proceedings (Enforcement Office), modified its site to provide prominent disclosure, through a series of hyperlinks, of pertinent taxes and fees information.

The Department views compliance with its full-price advertising rule seriously. The Enforcement Office has carefully considered all the evidence in this matter, including the explanation and mitigation offered by Expedia and believes that enforcement action is warranted. In particular, it wishes to emphasize that, in permitting Internet fare advertisers to disclose through a hyperlink the taxes and fees that may properly be stated separately from the advertised fare, it always has required that the hyperlink itself be clear and take the reader directly to a pop-up or a place on the linked screen where the required tax and fee disclosures are made. In order to avoid litigation, the Enforcement Office and

Expedia have reached a settlement in this matter in which Expedia, while not admitting any violation, accepts the findings and conclusions stated herein. Expedia consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 of the Department's regulations, and to the assessment of \$29,000 in compromise of potential civil penalties.

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 Expedia, as well as by 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 the order as being in the public interest;
2. We find that Expedia, Inc., violated 14 CFR 399.84 by advertising fares on its Internet site which were not full fares as discussed above;
3. We find that by engaging in the conduct described in paragraph 2, above, Expedia, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Expedia, Inc., is ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. We assess Expedia, Inc., a compromise civil penalty of \$29,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. The full assessed civil penalty shall be due and payable within thirty days of the issuance of this order.
6. Payment shall be made within 30 days of the issuance date of this order 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. Failure to pay the penalty as ordered shall subject Expedia to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure 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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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