

Update: U.S. Department of Transportation Advertising Guidelines 2012

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On January 26, 2012, the final portions of the U.S. Department of Transportation's (DOT's) "Enhancing Airline Passenger Protections II" consumer rule went into effect and imposed strict new requirements for the air travel industry on advertising and sales of air travel. DOT expects U.S. and foreign airlines, tour operators, online travel companies, travel agencies, cruise lines or any other parties advertising, selling or arranging for air transportation to comply with these policies and has issued consent orders and civil penalties for violations. The following is an overview of the DOT's enforcement policies.

Advertisements

DOT considers any solicitation for air transportation, regardless of the medium, to constitute an advertisement. This includes not only traditional print, radio and television solicitations, but also travel brochures, billboards, press releases, fare quotes provided by reservation agents and solicitations on the Internet, including emails, social media, banner ads and websites. DOT's advertising rules also apply to advertisements where air fares are "bundled" with a hotel, cruise, tour, car rental or other service.

Full-Fare Advertisements

All advertised and quoted air fares must state the entire price to be paid by consumers, including all taxes, fees and other mandatory charges collected by sellers of air transportation. Although carriers and ticket agents may show individual price components (e.g. fare, fees, taxes, etc.) along with the total, the price break-out of the components may not be false or misleading, must be presented on a per passenger basis and should be less prominent than the total price (i.e., in a smaller font). If both government-imposed fees and carrier- or agent-imposed fees are broken out as components, they should not be grouped as "taxes and fees" or any other description that fails to distinguish between them or that might imply that carrier- or agent-imposed fee components are actually imposed by the government. In many cases, a description such as "taxes and carrier-imposed fees" would be sufficient. Any terms used to describe price components must be accurate; for example, if a fee is identified as a "fuel surcharge," it should accurately represent the actual cost of fuel of that trip over some reasonable baseline.

Baggage Fee Disclosures

Air carriers and ticket agents with websites marketed to U.S. consumers must disclose, on the first screen where a fare is quoted, that additional baggage fees may apply and provide consumers information on where they can find such baggage fees. Additionally, all e-ticket confirmations, website purchase summary pages and post-purchase email confirmations must contain specific information regarding a passenger's free baggage allowance, carry-on fees and the first and second checked baggage fees, including any factors that may affect these fees. Carriers must provide this information in the text of the e-ticket confirmation. Ticket agents may refer consumers to the page on the carrier's website or to a page on their own websites where baggage fee information is displayed, but in either case, they must direct consumers to the specific place on the page (e.g. no scrolling) where the fee information is located.

Opt-In, Not Opt-Out

Fees for additional or optional services sold in conjunction with air transportation or an air transportation package, such as trip insurance, may not be added to consumer purchases by default. Rather, consumers must affirmatively opt in to the additional or optional service before the related fees are added to the purchase. Checkboxes for add-ons presented during online booking must be initially unchecked.

Code-Sharing Disclosures

During an online booking process, when a flight will be conducted on a code share basis, the corporate name of the operating carrier must be disclosed on the first screen following a consumer's search for an itinerary. The disclosure must be on the same screen as the itinerary and visible without following a hyperlink or "rolling over" any text. On a web page showing search results, it is not sufficient to indicate generally that some of the flights might be operated by other carriers.

Prominent Disclosure of Significant Restrictions and Conditions

The DOT considers certain restrictions and conditions on an air fare or air package to be significant enough to warrant being disclosed prominently along with those fares (i.e., not just in the terms and conditions). Such "significant restrictions" include advance purchase requirements, travel-by dates, black-out dates, capacity minimums or maximums, double occupancy requirements (for tour or cruise packages), nonrefundability, change and cancellation fees and departure city/market restrictions.

In internet ads, quoted prices (including those in the first search results displayed after a request by the consumer) should be marked with an asterisk that connects to either (i) a statement of the significant restrictions or (ii) a hyperlink labeled "restrictions apply" (or something similar) that will take the consumer to a statement of the significant restrictions. Either (i) or (ii) must be in reasonable proximity to the fare. In print ads and brochures, the disclosure should be on the same page as any quoted fare, linked with an asterisk. When the booking is made through a reservation agent, the restrictions should be disclosed prior to completion of the transaction.

Availability

If the number of seats available at an advertised price is limited, a disclosure of the restriction, along the lines of "seats are limited and may not be available on every flight," should be included in the advertisement. As a matter of enforcement policy, DOT requires that advertised fares be available in reasonable quantities (usually at least 10% of seat inventory) and for a sufficient period of time after the advertisement is published (usually 72 hours unless otherwise stated in the advertisement). Separate disclaimers about availability apply to brochures and other materials with long shelf lives. When an advertisement is repeatedly published, the same requirements apply each time the advertisement is re-published.

Each-Way vs. One-Way

Each-way fares that are only available when purchased for round-trip travel must be advertised as “each way” and include a conspicuous, proximate disclosure (e.g. inside or close to the “fare box”) that round-trip purchase is required. DOT considers the advertisement of such fares as “one way” an unfair and deceptive practice, even if a clear and proximate disclosure is provided. When advertising each way fares, reasonable differences between the outbound and return fares are permissible, but fares on the first leg must not be deceptively low when compared to fares on the second leg. For example, it is not permissible to “bait” the passenger with a heavily discounted outbound fare and then to make up the difference with a round trip price that is greater than a reasonable person would expect based on the outbound fare.

Carrier Website Requirements

Each U.S. and foreign air carrier with a website marketed to U.S. consumers must include a prominent hyperlink on the homepage directing consumers to page or place on a page that discloses all of the fees the carrier charges for optional services. Carrier websites must also provide the carrier’s tarmac delay contingency plan, customer service plan and contract of carriage in an easily accessible form.

“Free” Tickets and Applicable Restrictions

In order to use the word “free,” the ticket price must actually be free (e.g. no additional taxes, fees or charges may be added on). If an advertisement promotes a free ticket, all applicable restrictions must be conspicuously disclosed and the previously mentioned prominent notice requirements apply.

Public Charters

Advertisements for public charter flights should disclose that flights are charters and include the name of the charter operator, the name of the airline, and a reference to the Operator Participant Agreement. Such flights must not be advertised or sold until a public charter prospectus has been filed with DOT and assigned a public charter number. Charter flight solicitations must also comply with DOT’s full fare advertising rule.

Holding Out

U.S. and foreign carriers that are awaiting DOT/FAA authority may not advertise, list schedules, accept reservations or payments, or issue tickets for the proposed service until the relevant application has been approved by DOT/FAA. Any listing or advertisement of such service in any medium reasonably likely to reach the U.S. public will be considered unfair and deceptive by DOT.

For further information about EAPP II or other DOT advertising regulations, please contact:

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