



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

**Issued by the Department of Transportation
On the twenty-ninth day of December 2008**

**JTB Corporation
d/b/a JTB USA, Inc.**

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

Docket DOT-OST 2008-0031

Served December 29, 2008

CONSENT ORDER

This consent order concerns advertisements by JTB Corporation d/b/a JTB USA, Inc., ("JTB USA") 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 JTB USA to cease and desist from future violations and assesses the company compromise civil penalties of \$60,000.

JTB USA, as a seller of air travel, 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 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.¹ Taxes and fees imposed on an ad valorem basis, however, must be included in the advertised price, lest consumers be seriously confused about the total amount that must be paid. Carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, 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 proximately to the stated price, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed. (See, e.g., JetBlue Airways, Inc., Order 2004-2-4, Trafalgar Tours West, Order 2007-8-24, Grand Circle Travel Corp, Order 2006-7-23, 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>).

JTB USA specializes in offering airfares and comprehensive travel packages, which include airfare, hotel, guided tours and related amenities, particularly to Japan and other countries in the Far East. JTB USA has promoted its airfares and air travel packages through printed advertisements, brochures and mailers, and by means of advertisements that were published on its web site, www.jtbusa.com.

The airfares and air tours promoted in JTB USA’s print advertisements and on its web site did not comply with Department requirements. More specifically, the listed prices for the complete air and land packages failed to include fuel surcharges imposed by carriers, which must be included in the advertised price. For example, in connection with its advertisement of an airfare, entitled “From \$800 JAL US to Japan Special,” JTB includes the following notice just below the title: “Fuel surcharge (about \$170-366) and other taxes are not included in airfare below. Terms and conditions are subject to change without notice.”

Not including fuel surcharges imposed by carriers, or other surcharges collected by JTB USA, in the advertised price of an air ticket or air tour package when it is first listed violates 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. Moreover, it is unclear from JTB USA’s advertisement whether the

¹ See, e.g., Order 97-11-14.

notice regarding "other taxes not included" refers to taxes that properly may be excluded from the advertised fare, i.e., those imposed by the government on a per-passenger basis.

JTB USA recounts that, after receiving the Enforcement Office's letter of July 11, 2008, the firm worked promptly and diligently to revise the content of its web site and its newspaper and other print advertisements in order to ensure that they comply fully with the Department's regulations, guidance and enforcement case precedent. In particular, JTB USA explains that each price quoted now includes the applicable fuel surcharge. In contrast to the past, the fuel surcharge is no longer broken out of the fares that JTB USA offers. The JTB USA web site now includes a link to "applicable taxes and fees," which is placed immediately adjacent to the basic starting fare quoted and which takes the consumer directly to a complete list of applicable government taxes and fees. JTB USA notes that ambiguous references in the past to charges for travel beginning on the weekend, for taxes to be applied among a range of dollars, and phrases such as "restrictions may apply," have been revised or removed. As revised, JTB USA avers, its web site and print advertisements are now in full compliance with the Department's guidance and enforcement case precedent.

JTB USA states that while it recognizes that there are areas where full compliance did not occur in the past, any such non-compliance resulted from ignorance and was not intentional. JTB USA also notes that it has not received any complaints from customers regarding JTB USA's print or Internet advertising; JTB USA declares that it believes this fact shows that its customers continued to trust the firm's accuracy and dependability, based on their knowledge of JTB USA's record in providing honest and conscientious service. JTB USA pledges its continued best possible efforts to maintain full compliance with the Department's advertising rules and guidance.

The Enforcement Office has carefully considered all of the information available to it, including that provided by JTB USA, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and JTB USA have reached a settlement in this matter. While neither admitting nor denying the above allegations, JTB USA accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, JTB USA is assessed \$60,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the penalty amount, \$30,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$30,000 shall be due and payable if JTB USA violates the cease and desist or payment provisions of this order, in which case the entire sum will become due and payable immediately and the company may be subject to further enforcement action.

The Enforcement Office believes that the assessment of a civil penalty of \$60,000 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 JTB USA 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 JTB Corporation d/b/a JTB USA, 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, JTB Corporation d/b/a JTB USA, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. JTB Corporation d/b/a JTB USA, Inc., and all other entities owned and controlled by, or under common ownership and control with JTB Corporation d/b/a JTB USA, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. JTB Corporation d/b/a JTB USA, Inc., is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the assessed penalty amount, \$30,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$30,000 shall be due and payable if JTB USA violates the cease and desist provisions of this order

within one year following the date of issuance of this order, or fails to comply with the order's payment provisions, in which case the entire sum will become due and payable immediately and the company may be subject to further enforcement action;

6. Failure to pay the compromise assessment as ordered will subject JTB Corporation d/b/a JTB USA, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and 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 JTB Corporation d/b/a JTB USA, Inc., to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of air tours it causes to be published in printed format or circulates as current during the last 30 days of the one-year period following the issuance of this order; and (b) printouts of screen displays advertising air tour prices on its internet site 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)

An electronic version of this document is available
On the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp