



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

**Issued by the Department of Transportation
On the Thirteenth day of December, 2013**

**Laurus Travel Incorporated, d/b/a
Laurus Travel**

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 399**

Docket DOT-OST 2013-0004

Served December 13, 2013

CONSENT ORDER

This consent order concerns advertisements by Laurus Travel Incorporated, d/b/a Laurus Travel (collectively Laurus Travel), that violate the Department's requirements specified in Part 399 of the Department's regulations, and constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. An investigation by the Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") revealed that, prior to January 26, 2012, Laurus Travel advertised air tour packages whose prices did not meet Department requirements under Part 399, because they failed to include all fuel surcharges, failed to state that the prices were subject to post-sale price increases, and failed to provide proper disclosure that significant restrictions were applicable. The advertisements also failed to provide appropriate notice of the existence, nature and amount of other charges and additional taxes and fees that, until January 26, 2012, were permitted to be stated separately from the base fare. Moreover, the prices listed in the Laurus Travel's advertisements for air, land and cruise packages published after January 26, 2012, continued to state that the prices were subject to post-sale price increases even after final payment. Those advertisements violated 14 CFR 399.84(a), 399.88 and 399.89. This order directs Laurus Travel to cease and desist from future violations and assesses the company a compromise civil penalty of \$26,000.

Applicable Law

Laurus Travel, 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 Part 399, 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.

Prior to January 26, 2012, 14 CFR 399.84 required fare advertising to state the full fare. However, as a matter of enforcement policy, the Department 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 appeared or were indicated clearly in the advertisement so that the consumer could determine the full price to be paid.¹ On the other hand, carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, always had to be included in the advertised price.² Moreover, when an air tour seller or carrier advertised a specific price for a flight, air tour or component, it had to have on hand a reasonable inventory at the advertised price for a reasonable time period.³

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, required airlines and ticket agents to comply with the Department's full fare advertising rule as written. The revised full fare rule mandates that the price advertised for passenger air transportation include all government-imposed taxes and fees and all mandatory airline- and ticket agent-imposed surcharges and fees in every advertised fare or price for either a flight or an air tour.⁴ This provision was codified in 14 CFR 399.84(a), which took effect on January 26, 2012.⁵

¹ See, e.g., *Costa Cruise Lines, N.V.*, Order 2009-9-3, (September 3, 2009).

² See, e.g., *British Airways*, Order 2012-10-1, (October 1, 2012); *Tour Beyond, Inc., d/b/a China Spree*, Order 2011-1-6, (Feb. 9, 2011), and orders cited therein.

³ *AirTran Airlines*, Order 2010-5-29, (May 28, 2010).

⁴ Although charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on web sites that display the total price, such charges may not be false or misleading, may not be displayed as prominently as the full fare, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

⁵ The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares, including "free" fares, was also codified in section 399.84(a). *Enhancing Airline Passenger Protections*, 76 Fed. Reg. 23110 (Apr. 25, 2011).

As under the prior rule, significant restrictions, such as double occupancy (at times with identical itinerary requirements), single supplements, cash only prices, and conditions on availability must be disclosed prominently and proximately to the pertinent advertised fares.⁶

In addition, under the new rules, in section 399.88, the seller may not add or increase taxes and government fees after the consumer has paid in full unless notification has been given and the consumer's written consent obtained before full payment. Once full payment has been made, other price increases are prohibited. Under section 399.89, similarly, the seller must provide notification and obtain the consumer's written consent before *any* payment is made in order to be permitted to increase the price later, for example, by means of an added fuel surcharge. Violations of sections 399.84(a), 399.88 and 399.89 (and the previous full fare rule, section 399.84) constitute an unfair and deceptive practice and unfair method of competition in violation of section 41712.

The Enforcement Office investigation of Laurus Travel discovered violations under the earlier rules in effect prior to January 26, 2012 as well as later violations under the revised Department rules that continued through March 2013.

Background and Relevant Facts

Laurus Travel is a ticket agent, based in Vancouver, Canada, that specializes in offering to North Americans travel packages⁷ which include airfares, hotel accommodations, guided tours, and related amenities, particularly to China and other countries in the Far East. Laurus Travel has promoted its air travel packages through e-mail solicitations, subscriptions, and advertisements that are published on its web sites, including www.LaurusTravel.com, and others.

⁶ *British Airways*, Order 2012-10-1 (Oct. 1, 2012). *See also Lion World Travel d/b/a South African Airways Vacations*, Order 2010-9-5 (Sept. 3, 2010) and *Unique Vacations, Inc.*, Order 2010-11-7 (Nov. 8, 2010).

⁷ Section 399.84(a) applies to ticket agents that hold out air transportation, or air tours to, from, or within the United States to U.S. consumers through the Internet and other media. To determine whether an Internet advertisement is marketed to U.S. consumers, the Enforcement Office considers a number of factors, including whether fares are displayed or payable in U.S. dollars and whether sales can be made to persons with addresses or telephone numbers in the United States. Laurus Travel advertises air travel packages that originate at and return to numerous American gateways and quotes its prices in U.S. dollars based on the gateway used. *See* 734758 Ontario, Limited, d/b/a FlightNet-work.com, Order 2012-10-4, (Oct. 5, 2012). *See also* "Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)," Dated January 11, 2012, available at <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

Prior to January 26, 2012, numerous advertisements published by Laurus Travel on its website and other sites failed to meet Department requirements that all advertising state the entire price to be paid by the consumer. Among other problems, the advertisements did not properly disclose the existence, nature and amount of other taxes, charges and fees that the consumer would have to pay for the air transportation or air tour, but that, under the rules then in effect, were permitted to be stated separately from the base fare.⁸ The Enforcement Office informed Laurus Travel of these apparent violations.

For a significant time period following January 26, 2012, Laurus Travel published daily advertisements on its own and other web sites, promoting air tour packages, combining air fares, hotel, cruises, land tours, and related amenities. However, the prices advertised by Laurus Travel for its air package tours did not indicate that numerous significant restrictions applied. The prices were cash only prices (except for the initial deposit), and were based on double occupancy. Service and/or booking fees also were not included.

Information warning a consumer that subsequent fuel or service surcharges might be imposed could be uncovered on the Laurus Travel web site only if the reader scrolled down the tour advertisements' main pages to a group of subtitled hyperlinks listed in the fine print area, and clicked the link, "Terms & Conditions."

When selected, that hyperlink carried the reader to another page where the consumer was informed for the first time that, under the applicable Terms and Conditions, fuel surcharges might be added to the trip cost and were subject to increase even after final payment.⁹ Laurus Travel did not comply with the requirements prohibiting price increases after full payment as contained in sections 399.88 and 399.89.

Thus, the air tour packages promoted in Laurus Travel's web site advertisements did not comply with the Department's full-fare advertising rule, 14 CFR 399.84, in effect prior to the January 26, 2012 revision, or subsequently with 14 CFR 399.84(a),

⁸ See *Allegiant Air, LLC*, Order 2012-2-10 (Feb. 15, 2012), and Notice: "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003. Nor was there, as then required, in the alternative, a prominent reference or hyperlink, located proximately to the initial advertised price, which took the reader to a statement detailing the existence, nature and amount of applicable taxes and government fees that could properly be excluded from the quoted price.

⁹ For example, on January 17, 2013, the following limitations were found: "*If the airlines or cruise operators increase or impose new taxes, levies or fuel surcharges after your payment has been paid, we will pass on such charges to you by way of a new invoice.*" The practice of imposing increased air taxes and surcharges was not permitted under Department enforcement policy, even before the January 26, 2012, effective date of the regulations prohibiting post-purchase price increases. See *Grand Circle Travel Corp.*, Order 2006-7-23 (July 20, 2006); and the Department's regulations, *Enhancing Airline Passenger Protections*, *supra*. The Terms and Conditions also state that the tour price excludes "Local air taxes and surcharges. . . ."

399.88 and 399.89. In addition to violating the requirements of Part 399, and related Department precedent, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Statement in Mitigation

In mitigation and explanation, Laurus Travel states that it supports the Department's efforts to protect the public from deceptive advertising practices. As a Canadian travel company serving mostly Canadians, Laurus Travel affirms that it was unaware of the applicable regulations in the United States. Laurus Travel declares that upon receipt of the Department's initial investigation letter, it immediately contacted the Alliance of Canadian Travel Agencies (ACTA) to inquire about the applicability of United States regulations to foreign agencies. Laurus Travel recalls that ACTA initially advised Laurus Travel that the United States regulations do not apply to Canadian travel agencies. Thus, Laurus Travel decided to continue to maintain its prior practices even after the Department issued new rules that went into effect in January 2012.

Laurus Travel further states that it has had a "full disclosure and no-hidden-cost policy" and has never received a single consumer complaint related to its advertising of air travel packages. The firm believes that its policy has been effective. Nevertheless, as part of this settlement, the firm recounts that it later took the actions necessary to comply with the Department's regulations and brought its website and other practices into compliance. Laurus Travel avows that under the circumstances, its divergence from the Department's advertising regulations was not intentional, and that the firm undertook good faith cooperation with the Department and ultimately corrected its omissions.

Findings and Decision

The Enforcement Office has carefully considered all of the information available to it, including that provided by Laurus Travel, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Laurus Travel have reached a settlement in this matter. While neither admitting nor denying the above allegations, Laurus Travel accepts the findings and conclusions stated herein in order to avoid potential litigation, and agrees to cease and desist from further violations of 14 C.F.R. 399.84, 399.88, and 399.89, and 49 U.S.C. § 41712. Under this order, Laurus Travel is assessed \$26,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301.

Failure to pay the assessed penalty may subject Laurus Travel to additional enforcement action for the failure to comply with this order. The Enforcement Office believes that the assessment of a civil penalty of \$26,000 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 Laurus Travel and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR Part 1.

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 prior to January 26, 2012, Laurus Travel Incorporated 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 consumer to the firm for certain air transportation, and by requiring payment of additional fees and charges after the consumer had paid the advertised price;
3. We find that beginning on January 26, 2012, Laurus Travel Incorporated violated 14 CFR 399.84(a), 399.88 and 399.89, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the consumer to the firm for certain air transportation and by requiring payment of additional fees and charges after the consumer has paid the advertised price;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Laurus Travel Incorporated engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
5. We order Laurus Travel Incorporated and all other entities owned and controlled by, or under common ownership and control with Laurus Travel Incorporated, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84, 399.88, and 399.89, and 49 U.S.C. § 41712;
6. Laurus Travel Incorporated is assessed \$26,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 4 of this order. Of this total penalty amount, \$4,000 is due and payable within 15 days of the date of issuance of this order. Of the remaining \$22,000, six payments of \$1500 each shall be due and payable as follows: one payment each on February 1, 2014; May 1, 2014, August 1, 2014; November 1, 2014; February 1, 2015, and May 1, 2015. The remaining, \$13,000 shall become due and payable if, within eighteen months following the date of issuance of this order, Laurus Travel Incorporated violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable immediately;
7. Failure to pay the compromise assessment as ordered shall subject Laurus Travel Incorporated to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible further enforcement action for failure to comply with this order; and

8. We order Laurus Travel Incorporated to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order.

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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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