



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

Issued by the Department of Transportation
on the 18th day of December, 2003

**National Leisure Group, Inc.
Violations of 49 U.S.C. § 41712
and 14 CFR 399.84**

**Docket OST 2003-14194
Served: December 18, 2003**

CONSENT ORDER

This consent order concerns Internet advertising of air tour packages by National Leisure Group, Inc. (“NLG”), a ticket agent, on its website (www.vacationoutlet.com) and several other websites, that failed to comply with advertising requirements specified in Part 399 of the Department’s regulations (14 CFR Part 399) and constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712. The order directs NLG to cease and desist from further violations and assessed the company a civil penalty for the violations.

To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, section 399.84 of the Department’s regulations requires that advertisements for airfares and air tour packages by air carriers and ticket agents state the full price to be paid by the consumer. As we have specifically advised carriers and ticket agents, and as the Department has indicated in prior consent orders, these requirements apply to advertisements on Internet sites.¹ NLG, as a ticket agent, is subject to the advertising requirements of Part 399 of the Department’s rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising that states a price for air transportation 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 agent for such air transportation, tour or tour component. However, under longstanding enforcement case precedent, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by the government on a per-passenger basis, so long as their existence and amounts are clearly indicated in the advertisement. (See, e.g., Order 97-11-14). Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised fare.

¹ See, e.g.: *Icelandair, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-4-9; *Travelocity.com, L.P.*, Order 2002-3-28; *US Airways*, Order 2001-5-32; *Northwest Airlines*, Order 99-8-23. In addition, the Department’s industry letters and notices on this subject are available on the Department’s website (<http://www.dot.gov/airconsumer/>).

In addition, by Order 2001-12-7 (December 7, 2001), the Department granted a conditional exemption from its full fare advertising requirements in order to allow Orbitz, L.L.C., an online travel agent, to list its service fees separately, provided certain strict conditions are met. Consistent with the Department's action, the Enforcement Office no longer takes enforcement action against Internet travel agents that list their service fees separately from airfares, provided that they conform to the conditions in Order 2001-12-7 and set forth in the follow-up Notice dated December 19, 2001 (*See Revised Enforcement Policy on Deceptive Practices Regarding Service Fees Charged by Travel Agents in the Marketing and Sale of Airfares to the Public via the Internet* (the "Notice"), available at: <http://airconsumer.ost.dot.gov/>).

NLG failed to properly disclose the full fare, including its service fee, where applicable, for air tour packages advertised on its website and on third party websites. NLG advertised via a search feature that displayed air tour package prices, but failed to include in the prices an additional service fee that was added to all packages, or to comply with the conditions set forth in Order 2001-12-7. NLG customers were not informed until several steps into the booking process that a service fee would be added to the total air tour package price. As published on the Internet, NLG's advertisements violated section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, NLG states that it had no intention of providing misleading information. NLG points out that the total air tour package price, including the service fee, was displayed to the consumer before any purchase was finalized. The company further states that, notwithstanding the difficult technical and business challenges of compliance, it took steps to correct the deficient websites as soon as the matter was brought to its attention by Department staff. NLG states that the cost of this process was substantial in terms of time, money and the diversion of valuable resources.

The Aviation Enforcement Office has carefully considered all of the facts of the case, including the information provided by NLG and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. NLG, in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$30,000 in compromise of potential civil penalties, of which one-half will be paid according to the payment provisions described below. The remaining \$15,000 shall be suspended for one year following the service date of this order, and shall then be forgiven unless NLG fails to comply with the provisions of this order, including its cease and desist and payment provisions, during the suspension period, in which case the entire unpaid portion of the \$30,000 assessed penalty shall be due and payable immediately upon notice from the Department. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by NLG, as well as by airlines, other travel agents, 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 National Leisure Group, Inc., has violated 14 CFR 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, National Leisure Group, Inc., also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. National Leisure Group, Inc., and all other entities owned and controlled by, or under common ownership and control with, National Leisure Group, 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. National Leisure Group, Inc., is assessed \$30,000 in compromise of the potential civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of that penalty amount, \$15,000 shall be due and payable within 15 days of the service date of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless National Leisure Group, Inc., violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately upon notice from the Department, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject National Leisure Group, 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; and
6. 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.

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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