



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

Issued by the Department of Transportation  
on the 6th day of February, 2003

**Viação Aérea Rio-Grandense, S.A.  
Violations of 49 U.S.C. § 41712 and  
14 CFR Part 399**

**Served February 6, 2003**

**OST 2003-14194**

**CONSENT ORDER**

This order concerns newspaper, magazine, and Internet advertisements published by Viação Aérea Rio-Grandense, S.A., (VARIG) that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs VARIG to cease and desist from future violations and to pay a compromise civil penalty.

VARIG, as a foreign air carrier, is subject to the advertising requirements of Part 399. Under section 399.84, any advertising or solicitation for air transportation or an air-inclusive tour that states a price for such transportation or tour must state the *entire* price to be paid by the consumer. However, pursuant to 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 and departure taxes, to be stated separately in 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 so that consumers can determine the full fare to be paid. Advertisements that include only general statements that do not allow consumers to calculate the full fare to be paid do not comply with section 399.84 or enforcement case precedent. Advertisements that do not comply with the applicable requirements also constitute "unfair or deceptive practices" in violation of 49 U.S.C. § 41712.<sup>1</sup>

Beginning in July 2002, VARIG, in cooperation with various tour operators and the Rio Convention and Visitors' Bureau, embarked on an advertising campaign to publicize the

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<sup>1</sup> The Enforcement Office has pursued enforcement action on these grounds against numerous direct carriers, indirect carriers, and travel agents. *See, e.g.*, Orders 2002-12-12, 2002-5-30, and 2001-4-19.

resumption of its direct service between New York and Rio De Janeiro after a long hiatus. The campaign involved, among other things, placing advertisements that stated a price for an air-inclusive tour package in the *New York Times* and the regional editions of several national news, travel, and sports magazines. Generally, the advertisements were designed to promote the campaign theme of “Rio Within Reach” and not all of them stated prices, but those that did state prices failed to include taxes and fees in connection with the air travel component of the stated price such that a consumer could not therefore calculate the full amount to be paid for the air transportation.

Furthermore, an investigation of VARIG’s Internet website revealed that, in its display of “Internet Bargain” fares between New York and Miami and Rio de Janeiro, VARIG included a disclaimer announcing that “[g]overnment taxes and fees apply in addition to the above fares.” However, general phrases, such as this, that do not provide consumers an actual, maximum, or range of taxes and fees do not satisfy the requirements of section 399.84 or the Department’s enforcement case precedent. Although the webpage displaying the Internet bargain fares included a hyperlink to “Tax Information,” a consumer had to scroll down the page a considerable distance in order to see this link. Thus, it was likely that the tax information would not be conveyed to consumers before they attempted to purchase a ticket. After completing most of the ticket purchasing process, VARIG’s website would eventually lead consumers directly to another “Tax Information” hyperlink. Nevertheless, the fact that the hyperlink on the initial webpage was not prominent and proximate in relation to the advertised base fares falls within the range of advertising activities at variance with Departmental policy.<sup>2</sup>

Also of concern regarding VARIG’s Internet website was the nature of the “taxes” that, according to its “Tax Information” webpage, the carrier had broken out from its base fares. Specifically, VARIG had broken out a \$6.00 “insurance surcharge” assessed on a “per itinerary” basis that was not government-approved or imposed, thus further contravening the Department’s full-fare advertising case precedent.

Without admitting any violations, VARIG states in mitigation that it did not intend to violate any of the Department’s regulations concerning fare advertising. Rather, VARIG asserts that, because it had not undertaken a significant advertising campaign in the United States in many years, and had last made a comprehensive review of its website when it set it up in 2000, it had grown less familiar with the full fare advertising rule and was less focused on recent Department case precedent. VARIG states that, for the joint campaign with the Rio Convention and Visitors’ Bureau and the various tour operators, it, along with other advertisers, relied on an experienced advertising agency that held itself out as a specialist in travel advertising. VARIG also states that for the joint campaign, the websites and the phone numbers displayed in the advertisements were not VARIG’s. In addition, once it was fully apprised of the Department’s views with respect to the advertisements of the joint campaign that stated prices, VARIG took remedial action by means of a comprehensive letter-writing

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<sup>2</sup> With respect to Internet fare listings, the Department has permitted notice of the existence and amount of taxes and fees that may properly be stated separately from the base fare to be provided through a prominent hyperlink proximate to the stated fare. (See Order 2002-3-28 and the Notice Regarding Prohibition on Deceptive Practices in the Marketing of Airfare to the Public Using the Internet, dated January 18, 2001, which is available at: <http://www.dot.gov/airconsumer/20010118.htm>.)

campaign— to the advertising agency and the tour operators involved in the joint campaign— to apprise them of the Department’s fare advertising requirements. VARIG also took immediate steps to ensure that its Internet website complied with the Department’s requirements.

The Enforcement Office views seriously the obligation of all carriers to comply with Departmental regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. Accordingly, we have carefully considered all of the available information, including that provided by VARIG, but continue to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and VARIG have reached a settlement of this matter. Without admitting or denying the violations described above, VARIG 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 and to the assessment of \$20,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$10,000 shall be paid under the terms described below. The remaining \$10,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, VARIG violates this order’s cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and VARIG may be subject to further and more stringent enforcement action. The Enforcement Office believes this compromise is appropriate, serves the public interest, and creates an incentive for all air carriers to comply fully with the requirements of 49 U.S.C. § 41712 and 14 CFR Part 399.

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 Viação Aérea Rio-Grandense, S.A., violated 14 CFR 399.84 by causing to be published tour advertisements in newspapers and magazines and airfares on its Internet website that failed to state the entire price to be paid by the consumer;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Viação Aérea Rio-Grandense, S.A., also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. Viação Aérea Rio-Grandense, S.A., and all other entities owned and controlled by, or under common ownership and control of Viação Aérea Rio-Grandense, S.A., 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. Viação Aérea Rio-Grandense, S.A., is assessed a civil penalty of \$20,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of the assessed penalty, \$5,000 shall be due and payable within 15 days of the issuance of this order, \$2,500 shall be due and payable within 45 days of the issuance of this order, and \$2,500 shall be due and payable within 75 days of the issuance of this order. The

remaining \$10,000 shall be suspended for one year following this issuance of this order, and then forgiven, unless Viação Aérea Rio-Grandense, S.A, violates this order's cease and desist or payment provisions. Failure to pay the penalty as ordered will subject Viação Aérea Rio-Grandense, S.A., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and

6. Payment of the civil penalty described above 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 attached instructions.

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 initiative.

**By:**

ROSALIND A. KNAPP  
Deputy General Counsel

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