



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

Issued by the Department of Transportation  
on the **11th day of February, 2004**

**Consorcio Aviacsa S.A. de C.V.**

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

**Docket OST-2004-16943**

**Served: February 11, 2004**

**CONSENT ORDER**

This consent order concerns advertisements published by Consorcio Aviacsa S.A. de C.V.(Aviacsa) that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84. In advertisements published in several widely circulated newspapers between June and November 2003, the carrier offered fares without disclosing all taxes and fees associated with the quoted fares. Under 14 CFR 399.84 and enforcement case precedent, *ad valorem* excise taxes must be included in any advertised fare, while certain additional charges can be stated separately but must be disclosed. The advertisements in question therefore violated the Department rule and constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

To ensure that consumers are given accurate and complete fare information on which to base their airline travel plans, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are approved or 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 in the advertisement so that the consumer can determine the full fare to be paid. However, other additional carrier fees and charges, including any fuel surcharges or other surcharges, must be included in the advertised fare. The Aviacsa advertisements in question stated fares for flights from Houston to several Mexican destinations followed by a statement, "taxes not included." In violation of section 399.84 and Department guidelines, as well as of 49 U.S.C. § 41712, the advertisements failed to disclose either the excise tax or the various additional taxes and charges or the September 11<sup>th</sup> Security fee.

In mitigation, Aviacsa advises that the non-compliant advertisements were prepared by a recently hired consultant who was not fully conversant with section 399.84 and the

related Department guidelines. The carrier states that it promptly stopped publication of the advertisements when it was contacted by the Enforcement Office and has instructed its advertising staff members to familiarize themselves thoroughly with the pertinent advertising rules and to consult the Department in instances where they may be uncertain of the requirements. Furthermore, the carrier asserts that it has received no complaints from the public regarding its advertising practices. In addition, the carrier points out that it has served U.S. markets since 1994 and has not, during that interval, been the subject of any Department enforcement proceeding.

We consider any advertisement which does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84, and, while we acknowledge that Aviacsa has been cooperative in our investigation, we believe that enforcement action is warranted in this instance. Aviacsa, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 in future advertisements and to an assessment of \$15,000 in compromise of potential civil penalties, of which one-half will be paid according the payment provisions described below. The remaining \$7,500 shall be suspended for one year following the service date of this order and shall then be forgiven unless Aviacsa 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 \$15,000 assessed penalty shall become due and payable immediately.. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, is intended as a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Aviacsa, as well as by 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 Consorcio Aviacsa S.A. de C.V., violated 14 CFR 399.84 by advertising promotional fares in a number of widely circulated print publications that failed to disclose all additional taxes and fees, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Consorcio Aviacsa S.A. de C.V., violated 49 U.S.C. § 41712;
4. Consorcio Aviacsa S.A. de C.V., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Consorcio Aviacsa S.A. de C.V., is assessed \$15,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$7,500 shall be due and payable 30 days after the service

date of this order. The remaining \$7,500 shall be suspended for one year following the service date of this order and shall then be forgiven unless Aviacsa 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 \$15,000 assessed penalty shall become due and payable immediately; 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. Failure to pay the penalty as ordered shall also subject Consorcio Aviacsa S.A. de C.V., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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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(1) <b>To</b> <b>021030004</b>	(2) <b>Type</b>		
(3) <b>From</b>		(4) <b>Ref.</b>	(5) <b>Amount</b>
(6) <b>Ordering Bank and Related Data</b>			
(7/8) <b>TREAS NYC/CTR/OST</b>			
(9) <b>BNF=/AC-69010005 OBI=</b>			
(10) <b>Payor</b>			
(11)			

1. Treasury Department Code—Provided
2. Type Code—To be provided by sending bank.
3. Sending Bank's Code—(ABA#)
4. Reference No.—Optional number, entered if sending bank desires to number transaction.
5. Amount—Include dollar sign and punctuation including cents digits.
6. Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.
- 7/8. Entire line provided precisely as shown.
9. Entire line provided precisely as shown.
10. Enter name of air carrier or other payor (as shown on order).
11. Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."

**NOTE:** Questions about these instructions should be directed to Ms. Betty Barber, Office of Financial and Budget, General Accounting Branch, AMZ-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125, phone: (405) 954-1194, fax: (405) 954-3930. To ensure proper credit, notify Ms. Barber when each payment is made.