



**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, 2004**

**TFI Tours International, Ltd.
Violations of 49 U.S.C. § 41712
and 14 CFR 399.84**

Docket OST-2004-16943

Served: February 6, 2004

CONSENT ORDER

This consent order concerns Internet advertising of airfares by TFI Tours International, Ltd. (“TFI”), a ticket agent, on its website (www.lowestairprice.com), and in print advertisements, 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 TFI to cease and desist from further violations and assesses 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 TFI, 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/>).

TFI is also subject to the requirements concerning the Transportation Security Administration (“TSA”) security service fee program (the “September 11th Security Fee”). In December 2001, the TSA promulgated a regulation, 49 CFR Part 1510, that imposed a fee in the amount of \$2.50 per enplanement per passenger (with a \$10 maximum per round trip) on air transportation originating at most airports in the United States. Pursuant to section 1510.7, all direct air carriers are required to identify the security service fee specifically as the “September 11th Security Fee” in advertisements and solicitations for air transportation in which the security service fee is not included in the advertised fare. This office considers a travel agent’s failure to identify the September 11th Security Fee as required by the rule to be an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

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 consumer protection 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/>).

TFI failed to properly disclose the full fare, including its service fee, where applicable, for airfares advertised on its website. TFI advertised via a search feature that displayed airfares, but failed to include in the advertised fares an additional service fee that was added to certain fares, or to comply with the conditions set forth in Order 2001-12-7. TFI customers were not informed until several steps into the booking process that a service fee would be added to the advertised fare. In addition, TFI failed to properly disclose the taxes and fees for airfares advertised on its website. The TFI search results display did indicate that taxes and fees were not included in the airfares displayed to consumers; however, it did not state the amount of the taxes and fees that may properly be separately stated (such as segment fees, Passenger Facility Charges, the September 11th Security Fee and, for international destinations, additional government-imposed taxes and fees). It was not until several steps into the booking process that TFI disclosed the full fare, including all taxes and fees, to a consumer.

In addition to the Internet advertisements, TFI caused print advertisements promoting airfares to numerous foreign and domestic destinations to be published in several newspapers serving large metropolitan areas that failed to include service fees in the advertised fares. In addition, the advertisements failed to include certain government imposed taxes and fees in the fares or to state the nature and amounts of the government imposed taxes and fees that may properly be separately stated in order to allow a consumer to calculate the full price of the advertised airfares. In addition to not stating the amount of the government imposed taxes and fees, neither the print advertisements nor the corresponding website explicitly identified the September 11th Security Fee. As published on the Internet and in print, the TFI advertisements violated section 399.84 of the Department’s regulations and 49 U.S.C. § 41712.

Under Department precedent referred to above, advertisements may exclude from a fare certain kinds of charges, i.e., government-imposed, per passenger fees that are not *ad valorem* in nature, so long as the excluded charges are presented in reasonably close proximity to the advertised fare. Internet fare advertisements that quote a fare that is not a full fare or that has significant restrictions should have an explicit statement that additional charges or conditions apply immediately adjacent to the fare with a hyperlink to a full explanation. Alternatively, specific fare advertisements should highlight the fact that additional fees, restrictions, or conditions apply, with an asterisk or other symbol immediately next to the fare or list of fares, together with a concise explanation for the asterisk or symbol (e.g., “taxes, fees, and restrictions apply”) in reasonably close placement to the relevant fare or fares. A full explanation of the nature and amount of all additional fees and significant restrictions should appear on the same page as the quoted fare or may be linked to the fare by a single hyperlink. As published on the Internet, TFI advertisements violated section 399.84 of the Department’s regulations and 49 U.S.C. § 41712.

In mitigation, TFI states that it had no intention of providing misleading information. TFI points out that the total airfare, including government imposed taxes and fees and its service fee, was displayed to the consumer on its website, or disclosed to the consumer on the telephone, before any purchase was finalized. TFI also points out that it took steps to correct both its print and Internet advertising as soon as the matter was brought to its attention by Department staff. The company further states that, in order to fully cooperate with the Department and despite the significant lost revenue, TFI took down its website for almost a month while it established a new technical and management program to ensure future compliance with Department requirements.

The Aviation Enforcement Office has carefully considered all of the facts of the case, including the information provided by TFI and the corrective measures it has adopted, but continues to believe that enforcement action is warranted. TFI, 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 \$40,000 in compromise of potential civil penalties, of which \$10,000 shall be paid in accordance with the schedule set forth below and \$10,000 shall be offset for past expenditures to improve future compliance.² The remaining \$20,000 shall be suspended for one year following the service date of this order, and shall then be forgiven unless TFI 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 \$40,000 assessed penalty shall become 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 TFI, as well as by airlines, ticket agents, and other sellers of air transportation.

² TFI is being credited \$10,000 as an offset in recognition of the \$15,000 in expenditures made by TFI to establish a new technical and management program designed to ensure that future TFI advertising on the Internet and in print will comply with the Department’s advertising rules.

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 TFI International Tours, Ltd., 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, TFI International Tours, Ltd., also engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. TFI International Tours, Ltd., and all other entities owned and controlled by, or under common ownership and control with, TFI International Tours, Ltd. 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. TFI International Tours, Ltd., is assessed \$40,000 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 \$2,500 shall become due and payable within 15 days of the service date of this order, \$2,500 shall become due and payable on April 1, 2004, \$2,500 shall become due and payable on July 1, 2004, and \$2,500 shall become due and payable on October 1, 2004. Another \$10,000 of the assessed penalty shall be offset in recognition of the company's expenditures to establish a new technical and management program to ensure that in the future TFI International Tours, Ltd. remains in compliance with the Department's advertising rules. The remaining \$20,000 shall be suspended for one year following issuance of this order, and then forgiven, unless TFI International Tours, Ltd., 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 TFI International Tours, Ltd., 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. Payments 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:

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Deputy General Counsel

(SEAL)

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