



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

Issued by the Department of Transportation
on the sixteenth day of November, 2006

Israil Airlines and Tourism, Ltd.,

**Violations of 49 U.S.C. §§ 41301
and 41712, and
14 CFR Parts 399 and 380**

Docket OST 2006-23528

Served November 16, 2006

CONSENT ORDER

This consent order concerns deceptive advertising and unauthorized engaging in air transportation by Israil Airlines and Tourism, Ltd. ("Israil"), a foreign air carrier based in Tel Aviv, Israel, that violated 14 CFR 399.84 and 14 CFR Part 380 of the Department's regulations, as well as 49 U.S.C. § 41301, and which also constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. This order directs Israil to cease and desist from future violations and assesses the carrier a compromise civil penalty of \$55,000.

Section 41301 requires that a foreign air carrier hold authority from the Department in order to engage in air transportation to and from the United States. From the standpoint of the requirements of section 41301, the holding out of air service, as well as the actual operation of air service, constitutes "engaging" in air transportation. That section is violated when a foreign air carrier that is authorized only to engage in charter service holds out scheduled service. Unauthorized holding out of scheduled air service also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Pursuant to Part 380, a foreign air carrier may conduct Public Charter air transportation as a charter operator provided that it complies with that Part. Under 14 CFR 380.25, an airline selling Public Charter air service directly to the public may not hold out or sell Public Charter transportation until it has first filed a Public Charter prospectus and obtained approval from the Department covering that charter air transportation. Violations of 14 CFR 380.25 by a foreign air carrier also violate 49 U.S.C. §§ 41301 and 41712.

An airline that advertises fares, including fares for Public Charter flights, must comply with 14 CFR 399.84, the Department's full fare advertising requirements. That section requires that any advertising of passenger air transportation, a tour, or a tour component that states a price must state the full price to be paid by the consumer. Pursuant to its enforcement case precedent the Department permits 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 fare 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 in the advertisement so that the consumer can determine the full fare to be paid. (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, February 3, 2004; *Icelandair*, Order 2003-4-9, April 10, 2003; and Notice entitled "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and Notice entitled "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.) Fuel surcharges, however, are not among these exceptions and must be included in the advertised fare. Violations of section 399.84 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Israir was formed in Tel Aviv to provide intra-Israel air transport services with some international charter flights. It subsequently received designation from Israel to provide charter services between Israel and the United States. Israir received Public Charter authority under PC 04 - 144 to sell public charter flights directly to the public, and conducted its first group of charter flights between June and October 2004. Israir subsequently received Public Charter authority under PC 05 - 026, with flights beginning in March 2005 and ending on October 31, 2005.¹ However, Israir continued to conduct Public Charter flights after this authority terminated and before the carrier renewed its Public Charter authority

¹ Israir had been granted an exemption under 49 U.S.C. § 40109 to conduct charter service as a direct carrier under Part 212 until June 16, 2006, see Docket 2002-14177, but this authority alone did not authorize the sale or operation of Public Charter service beyond the October 31, 2005, date.

from the Department.² The unauthorized sales and holding out by Israil of Public Charter flights in the absence of an effective, approved Public Charter prospectus violated 49 U.S.C. § 41301 and 14 CFR Part 380, and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In advertisements published from December 2005 through March 2006 for its charter service between Tel Aviv and New York, Israil announced a round-trip fare, but noted in the small print that "Taxes and fuel surcharges are additional." Similar advertisements appeared on Israil's web site. The failure by Israil to include fuel surcharges in its advertised fares as well as its failure to state the nature and amount of the government-imposed taxes and fees violated 14 CFR 399.84 and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In addition, on March 6, 2006, Israil applied for an amendment of its exemption authority as a charter carrier to cover scheduled carrier authority. *See* Docket 2002-14178-4, Amendment to Application of Israil Airlines & Tourism Ltd. For a Foreign Air Carrier Permit. Prior to applying for or receiving scheduled authority from the Department, Israil published advertisements and sold tickets for scheduled service.³ The unauthorized holding out and sales by Israil of scheduled service, in the absence of any authority to sell such service, violated 49 U.S.C. § 41301 and constituted an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In explanation and mitigation, Israil states that, with respect to the advertisements in question, it relied upon the advice of its General Sales Agent for all U.S.-originating sales, who apparently did not understand the particularities of the Department's full fare advertising requirement. Israil avows that there was never any intent to mislead or deceive the traveling public. Indeed, Israil contends that the traveling public was not harmed by the advertising in question since the total payable price was stated in such advertisements, albeit not in the exact form required by the Department's rules and enforcement policies. Once it learned of these errors, Israil declares that it instituted detailed remedial action and brought in United States counsel in order to prevent a repetition of any mistakes in the future.

² That renewed authority consisted of an amendment to PC 05 - 026, which was approved on February 15, 2006, and covered flights beginning on February 14, 2006. Subsequently, on March 6, 2006, Israil received Public Charter authority from the Department under a new prospectus number, PC 06 - 043, to conduct flights between March 18 and June 15, 2006.

³ These advertisements appeared on Israil's web site, www.israilusa.com, and in publications such as *The Jewish Voice*.

Israir further states that it was the company itself that discovered that Israir had failed to update the flight schedule submitted as an attachment to its Public Charter prospectus. Once it learned, Israir explains, it voluntarily informed the Department of the error. Indeed, Israir deposited all the monies it received from passengers for such flights in the appropriate escrow account; it maintained in effect the security bond that covered those flights; it operated all of the flights advertised during this period and honored all passenger tickets that were presented. Therefore, Israir asserts that no passengers were harmed by its omission of the required updated flight schedule.

Israir further declares that its reference to scheduled service in advertisements and public statements before the carrier received such authority from the Department was the result of its enthusiasm over its achievement of receiving designation by the Israeli government as a scheduled carrier from Tel Aviv to New York. The carrier recounts that the designation, which came after several years of bitter opposition and proceedings that went to the Supreme Court of Israel, was extensively covered by the press and television in Israel. The carrier asserts that for these reasons, no members of the public were in any way harmed or misled by these circumstances.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Israir, but continues to believe that enforcement action is warranted. The Enforcement Office disagrees with Israir's assertions that no members of the traveling public were in any way harmed by Israir's violations of the Department's rules and enforcement policies. In this connection, the Enforcement Office and Israir have reached a settlement of this matter. Israir, in order to avoid litigation, and without admitting or denying the alleged violations, consents to the issuance of an order to cease and desist from future violations of 14 CFR Part 380 and 14 CFR 399.84, and 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$55,000 in compromise of potential civil penalties. Of this total penalty amount, \$27,500 shall be due and payable within 30 days of the issuance of this order. The remaining \$27,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Israir 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 \$55,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. We believe that the compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising and licensing requirements by Israir, as well as by other foreign air carriers and companies engaged in the sale 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 Israil Airlines & Tourism, Ltd., by offering and selling Public Charter air transportation without appropriate authority, violated 14 CFR Part 380 and 49 U.S.C. § 41301;
3. We find that Israil Airlines & Tourism, Ltd., by offering and selling scheduled air transportation without appropriate authority, violated 49 U.S.C. § 41301;
4. We find that Israil Airlines & Tourism, Ltd., violated 14 CFR 399.84 by advertising fares in newspapers and on the Internet that failed to state the full price to be paid, as described above;
5. We find that Israil Airlines & Tourism, Ltd., by engaging in the conduct and violations described in paragraphs 2 through 4 above, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. Israil Airlines & Tourism, Ltd., and all other entities owned or controlled by Israil Airlines & Tourism, Ltd., and their successors and assignees, are ordered to cease and desist from violations of 14 CFR Part 380 and 14 CFR 399.84, and 49 U.S.C. §§ 41301 and 41712;
7. Israil Airlines & Tourism, Ltd., is assessed \$55,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 5 of this order. Of this total penalty amount, \$27,500 shall be due and payable within 30 days of the issuance of this order. The remaining \$27,500 shall be suspended for one year following issuance of this order, and then forgiven, unless Israil Airlines & Tourism, 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 \$55,000 penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Israil Airlines & Tourism, 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

8. 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)

*An electronic version of this document is available
on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*