



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

Issued by the Department of Transportation
on the twentieth day of July 2006

Grand Circle Corporation, d/b/a
Grand Circle Travel and d/b/a
Overseas Adventure Travel

Violations of 49 U.S.C. § 41712, and
14 CFR Part 399

Docket OST 2006-23528

Served July 20, 2006

CONSENT ORDER

This consent order concerns advertisements by Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel (collectively "Grand Circle") that violate the Department's advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399), and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Grand Circle to cease and desist from future violations and assesses the company compromise civil penalties of \$90,000.

Grand Circle, as a seller of air travel, is subject to the advertising requirements of Part 399 of the Department's rules. Under 14 CFR 399.84, any advertising that states a price for air transportation or an air tour 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 ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees imposed by a government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are indicated clearly in the advertisement so that the consumer can determine the full price to be paid.¹ Taxes and fees imposed on

¹ See, e.g., Order 97-11-14.

an *ad valorem* basis, however, must be included in the advertised price, lest consumers be seriously confused about the total amount that must be paid. Carrier- or agent-imposed surcharges, e.g., fuel, insurance, service charges, or other such costs, must be included in the advertised price. With respect to airfares and air tours advertised on the Internet, taxes and fees that are permitted to be excluded from the advertised price may be noted in a prominent link, placed proximately to the stated price, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed. (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, and orders cited therein, and the notice entitled: Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including "Free" Airfares, which is dated September 4, 2003, as well as guidance letters to the industry which can be found at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.)

Grand Circle specializes in offering comprehensive travel packages that include airfare, hotel, guided tours and other amenities. During 2005, Grand Circle promoted air travel packages through printed brochures and by means of advertisements that were published over the Internet -- on the web sites of Grand Circle Travel and Overseas Adventure Travel -- and through direct e-mail advertising campaigns. Those advertisements routinely stated prices that improperly excluded fuel surcharges and also failed properly to provide notice of government taxes and fees that are permitted to be stated separately from the advertised price. Instead, in the upper section of the text, the advertisement stated, after it named the departure city:

Prices are per person, based on double occupancy, including round-trip airfare from the city above, and meals and sight seeing as specified as included features. Additional taxes and fees will apply.

In addition, at the bottom of the web page, the "Please Note" section announced that "2. Additional taxes and fees will apply. Please ask our Travel Counselors for details." There was no link taking the user to a site with a complete description of the nature and amount of the omitted taxes and fees. Not including the fuel surcharge(s) in the advertised price violates the Department's regulations and enforcement case precedent. Likewise, the failure to give a description of the taxes and fees assessed and their amount or to provide a range of the total amounts of applicable taxes and fees also violates the Department's full-fare advertising rule and the related case precedent.

In mitigation and explanation, Grand Circle Corporation, states that it has always strived to conduct its business in conformity with all Department laws and regulations. The firm asserts that it could not have built its business as successfully over the last twenty years had it not implemented a policy of sensitivity and responsiveness to customer needs. When Grand Circle learned of the Enforcement Office's concerns about its advertising, the firm declares that it acted promptly to revise and update the Overseas Adventure Travel web

site (www.oattravel.com) and its Grand Circle Travel web site (www.gct.com) to include all airline fuel surcharges in its base tour prices and to highlight and detail the taxes and other fees which are not required by the Department to be included in the base tour prices.

In addition, Grand Circle recounts that it has devised new scripting for its telephone sales staff that requires it specifically to inform each customer of the reasons for the differences in the base tour prices displayed on the updated web site and the original base tour prices announced in its existing 2006 brochures, which the customer may have seen. Grand Circle states that the new script explicitly highlights to its customers: (i) that the base tour price now includes any fuel surcharge that formerly was added afterwards; (ii) the specific per-passenger cost of any such fuel surcharge; (iii) the details of the taxes and fees imposed on each customer; and (iv) the total price of the tour. The company states that in addition to the new script for the sales staff, Grand Circle has developed a scripted "Fuel Surcharge Q & A" to be used to answer questions that the staff typically hears from customers when such a significant business change is made. Training of the staff has already taken place, and the firm explains that it is monitoring calls between its sales staff and its passengers to ensure compliance with the new script content.

Grand Circle states that it has willingly expended a great deal of time and money to revise its web sites rapidly and ensure fair treatment to persons who may feel misled by its marketing. The firm points out that it has instituted a policy under which it will refund any fuel surcharge about which it receives a customer complaint where the customer booked a trip before the revision of the Grand Circle web site. To date, Grand Circle has reported to the Enforcement Office refunds under such circumstances totaling \$31,533 to 370 customers.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Grand Circle, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Grand Circle have reached a settlement in this matter. While neither admitting nor denying the above allegations, Grand Circle accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Grand Circle is assessed \$90,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this penalty amount, \$30,000 will be offset in recognition of amounts Grand Circle has incurred in refunding the fuel surcharges under the circumstances described above; these refund payments have been supported by records provided to the Enforcement Office.² Another \$15,000 of the penalty amount shall be due and payable within 15 days of the issuance of this order. The remaining \$45,000 shall be suspended for one year from the date of issuance of this order, and then forgiven unless Grand Circle violates this order's cease and desist provision during that time period or fails to comply with the order's payment provisions, in which case the unpaid portion of the penalty shall become due and payable immediately. The

² Grand Circle certified that it has refunded \$31,533 to 370 travelers.

Enforcement Office believes that the assessment of a civil penalty of \$90,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to unlawful conduct in the future by Grand Circle 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 Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel violated 14 CFR 399.84, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the firm for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel, and all other entities owned and controlled by, or under common ownership and control with Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel, 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. Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel, is assessed \$90,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this penalty amount, \$30,000 shall be offset in recognition of amounts Grand Circle has incurred in refunding fuel surcharges paid by Grand Circle travelers. Another \$15,000 of the penalty amount shall be due and payable within 15 days of the date of issuance of this order. The remaining \$45,000 shall be suspended for one year from the date of issuance of this order, and then forgiven unless Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a

Overseas Adventure Travel, violates this order's cease and desist provision during that time period or fails to comply with the order's payment provisions, in which case the unpaid portion of the penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Grand Circle Corporation, d/b/a Grand Circle Travel and d/b/a Overseas Adventure Travel, 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 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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