



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

Issued by the Department of Transportation
on the twenty-fourth day of August 2007

Uniworld River Cruises, Inc.

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

Docket OST 2007-26781

Served August 24, 2007

CONSENT ORDER

This consent order concerns advertisements by Uniworld River Cruises, Inc., ("Uniworld") that violate the Department's advertising requirements specified in section 399.94 of the Department's regulations (14 CFR 399.84), and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Uniworld River Cruises to cease and desist from future violations and assesses the company compromise civil penalties of \$50,000.

Uniworld River Cruises, 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 Ticket agents must provide similar notice where airfares are held out as “free,” but government-imposed taxes and fees must be paid by a passenger in order to utilize the “free” fare. Taxes and fees imposed on 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, and 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, *Grand Circle Travel Corp.*, Order 2006-7-23, 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>.)

Uniworld River Cruises has specialized for 30 years in offering comprehensive travel packages that include airfare, hotel, river cruises, guided tours and other amenities. During 2005 and 2006, Uniworld River Cruises promoted air travel packages through printed brochures, mailers and by means of advertisements that were published on its web site and through direct e-mail advertising campaigns. The airfares and air tours promoted in Uniworld River Cruises’ brochures, e-mails and mailers and on its web site, including those touting “free” airfares, did not comply with Department requirements. More specifically, the listed prices for the complete air and cruise packages did not include airline fuel surcharges and they lacked an appropriate notice or hyperlink prominent and proximate to the price that disclosed to the viewer that taxes and fees that are permitted to be listed separately from the advertised price were not included.²

¹ See, e.g., Order 97-11-14.

² The Uniworld River Cruises advertisements included at the bottom of the page thirteen different links. The one entitled “Terms & Conditions,” if chosen by the reader, takes him or her to another page. On that page, entitled “Your Flight,” the text states:

Air Transportation, U.S. Customs & Immigration fees, U.S. departure taxes, other governmental or quasi-governmental fees, air taxes, fuel surcharges, and airport facility charges are not included in the prices quoted and are approximately \$335 per person. These charges will be added to your invoice. Additional taxes, fees or surcharges imposed subsequent to the printing of this brochure are your responsibility. Some destinations impose taxes or fees that are collected locally and

Not including fuel surcharges in the advertised price when it is first listed violates the Department's regulations and enforcement case precedent. Likewise, the failure to provide appropriate notice of, and a link to, a description of the taxes and fees assessed and their amount, or a range in amounts, also violates the Department's full-fare advertising rule and related case precedent. In addition to violating the requirements of section 399.84 and related Department precedent and enforcement policies, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

Moreover, once a firm quotes through its advertising a specific price for a flight, tour or tour component, the firm must charge that price to the consumer. When a firm advertises a specific price for a flight, tour or tour component, it must have available a reasonable inventory at the advertised price for a reasonable time period. To preclude there being a deceptive practice issue for brochures, a firm can state in its brochures that the prices it is advertising are good as of or until a date certain, and advise the consumer that availability of the advertised fares may be limited and current fares may be higher with notice as to where current prices can be obtained. For example, the following language would suffice if conspicuous to a reader: "Prices in this brochure were effective on [date] and their availability is limited. At the time you purchase your tour, prices may be higher. For current prices, please see our website." Fares held out on the Internet or in newspapers, or orally, however, must be current and available.

In mitigation and explanation, Uniworld River Cruises states that it takes its obligations under the Department's full fare advertising rule very seriously. When Uniworld River Cruises learned that the Enforcement Office was concerned about its advertising, the firm declares that it took prompt and thorough action to address those concerns. In this regard, Uniworld River Cruises recounts that it immediately modified its web site to show a figure for air-related taxes, fees and charges adjacent to its base cruise plus air pricing for the balance of its 2007 season. The company states that it also retained regulatory counsel to discern what further changes would be required. Uniworld River Cruises attests that all advertising for the 2008 season will be redone to comply with Department requirements.

Uniworld River Cruises further explains that consumers could not book a Uniworld cruise plus air package online; rather, most of its cruises have always

cannot be prepaid.

been booked through travel agents and tour operators, or Uniworld's own agents. Therefore, the firm states, it is confident that consumers have always been advised of additional charges and the total price during the booking process, before purchasing a Uniworld tour. In addition to the steps described

above, Uniworld River Cruises declares that it instructed reservations agents to provide specific information on changes in displayed prices, and added to its existing brochures and subsequent mailings a new information sheet/letter that explains the alterations it has made in its fare advertising.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Uniworld River Cruises, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Uniworld River Cruises have reached a settlement in this matter. While neither admitting nor denying the above allegations, Uniworld River Cruises accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Uniworld River Cruises is assessed \$50,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this penalty amount, \$25,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless Uniworld River Cruises violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. The Enforcement Office believes that the assessment of a civil penalty of \$50,000 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 Uniworld River Cruises 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 Uniworld River Cruises, Inc., 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, Uniworld River Cruises, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. Uniworld River Cruises, Inc., and all other entities owned and controlled by, or under common ownership and control with Uniworld River Cruises, Inc., 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. Uniworld River Cruises, Inc., is assessed \$50,000 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, \$25,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven unless Uniworld River Cruises, Inc., violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. Failure to pay the compromise assessment as ordered will subject Uniworld River Cruises, Inc., 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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