



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

Issued by the Department of Transportation
On the Seventh Day of February, 2008

Pacific Delight Tours, Inc.

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

DOT-OST Docket 2008-0031

Served February 7, 2008

CONSENT ORDER

This consent order concerns violations by Pacific Delight Tours, Inc. (Pacific Delight), of the requirements of the Department's full fare advertising rule, 14 CFR 399.84. Pacific Delight failed to include fuel surcharges, where applicable, in air tour prices it listed in a number of print advertisements and on its website and failed to provide adequate disclosure of additional charges and fees, such as taxes and other fees that may be listed separately. These omissions, moreover, violated 49 U.S.C. § 41712, the statutory provision prohibiting unfair and deceptive trade practices and unfair methods of competition. This order directs Pacific Delight and its affiliated companies to cease and desist from future similar violations and assesses \$20,000 in compromise civil penalties.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full price to be charged the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel purchasing decisions. Long-standing enforcement case precedent adopted by the Department allows 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. Such additional charges in website displays may be accessible through a hyperlink or be stated in prominent notations next to any fare that excludes those charges. However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier or vendor fees, must be included in the advertised

base fare. These rules extend to the advertising activities of ticket agents, including those of air tour operators.¹

In an advertising program in early 2007, Pacific Delight promoted several of its air tours to China in the *Washington Post*, *International Travel News*, *Travel and Leisure* and other publications. These advertisements failed to include the airline fuel surcharge in the advertised price and failed to make any mention of additional fees and taxes. The advertisements, in some cases, advised consumers to check the company's web site for departure dates and special offers, without giving any indication of the existence or the amount of added charges or surcharges. In other cases, advertisements stated that taxes were additional but gave no information on their amount and made no mention of fuel surcharges. On the website itself, although the fuel surcharge was identified, it was listed separately, rather than included in the base fare as required by the Department. Moreover, the additional taxes permitted to be stated separately were not prominently disclosed through a hyperlink or in text next to the pertinent fare, as required by section 399.84 and the Department's enforcement case precedent. Information on additional taxes (and the fuel surcharge) was, instead, placed in a hyperlink labeled "Notes, Terms and Conditions," which did not provide the conspicuous display required by the Department. As a further matter, in response to telephone inquiries placed by the Enforcement Office, the company's reservations agents were at least initially unable to provide full fare information on the additional charges.

In mitigation, Pacific Delight states that the errors in its print advertisements and on its website were inadvertent and not intended to mislead consumers. In nearly forty years of operating, the company states it has never received a consumer complaint about its advertising nor has it learned of any instance where consumers were confused by its pricing. Pacific Delight states that it takes compliance with the Department's requirements seriously and moved quickly to correct the errors as soon as they were brought to its attention. According to the company, at this time all of Pacific Delight's marketing materials are in compliance with DOT's rules. Pacific Delight states it has devoted significant management attention and resources to this matter and has endeavored to make certain that it does not repeat the errors. Finally, Pacific Delight states that it is a small, family-run firm, and it continues to be committed to providing its customers with excellent service and value.

We acknowledge the full cooperation of Pacific Delight in our investigation and its prompt corrective action. However, we consider any advertisement that does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84 and we believe that the violations discussed above warrant enforcement action. Pacific Delight, 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 and to an assessment of \$20,000 in compromise of potential civil penalties of which one-half will be payable according to the payment schedule described below. The company has modified its website to provide

¹ See *Viking River Cruises*, Order 2007-8-25; *Grand Circle Corp. d/b/a Grand Travel Corp.*, Order 2006-7-23; and Notice dated September 4, 2003, at <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

the necessary fare disclosures and appears to have taken steps to prevent future publications that fail to comply with section 399.84. 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, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Pacific Delight, as well as by other vendors 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 Pacific Delight Tours, Inc., violated 14 CFR 399.84 by advertising fares which failed to state the total fare to be paid by passengers, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Pacific Delight Tours, Inc., also violated 49 U.S.C. § 41712, which proscribes unfair and deceptive trade practices and unfair methods of competition;
4. Pacific Delight Tours, Inc., and 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. We order Pacific Delight Tours, Inc., to submit to the Office of Aviation Enforcement and Proceedings a list of all published advertisements it has placed in any printed media, indicating date and name of publication, during the sixth and twelfth months of the one-year period following the issuance of this order; this list should be submitted within 15 days of the conclusion of the referenced one-year period;
6. Pacific Delight Tours, Inc., is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$10,000 shall be due and payable within 30 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the payment date set in this order and then forgiven, provided that Pacific Delight complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Pacific Delight may be subject to further enforcement action; and
7. 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 subject Pacific Delight Tours, Inc., 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:

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Deputy General Counsel

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