



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

**Issued by the Department of Transportation
on the fifteenth day of February, 2008**

Ritz Tours, Inc.

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

Docket DOT-OST 2008-0031

Served February 15, 2008

CONSENT ORDER

This consent order concerns advertisements by Ritz Tours, Inc. ("Ritz Tours"), that violate the Department's advertising requirements specified in section 399.84 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 Ritz Tours to cease and desist from future violations and assesses the company compromise civil penalties of \$55,000.

Ritz Tours, 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 existence and 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 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, *Trafalgar Tours West*, Order 2007-8-24; *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>.)

Ritz Tours has specialized for over 20 years in offering comprehensive travel packages that include airfare, hotel, river cruises, guided tours and other amenities, particularly to countries in the Far East. During 2005, 2006, and 2007, Ritz Tours promoted air travel packages through printed brochures and mailers, 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 Ritz Tours' brochures, e-mails and mailers and on its web site, did not comply with Department requirements. More specifically, the listed prices for the complete air, land 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

Failing to include fuel surcharges in the advertised price when it is first listed violates the Department's regulations and enforcement case precedent.³ 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

¹ See, e.g., Order 97-11-14.

² It is not unless a visitor to the Ritz Tours web site selects the "Travel Info" link, and then the "Travel Tips" link, that he or she arrives at a section of relevant text discussing taxes and fees. There, under the heading "Costs Not Included," the site advises the reader as follows:

[Tour price does not include] Air fare from your home town to the gateway city, air ticket tax, airport taxes or any other charges levied by local state, federal or national government agencies

³ Ritz Tours' agents indicated during initial research that fuel surcharges were not included in the advertised price of an air tour package.

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, Ritz Tours states that it takes its obligations under the Department's full fare advertising rule very seriously. Ritz Tours avows that it had no intention of violating any regulation or other requirement of the Department. Ritz Tours states that once it became aware that the full fare advertising rule is applicable to operators of air tours, it immediately began to ascertain what corrective action was required to bring its online and other advertising practices into conformity with the Department's regulations and other requirements. Ritz Tours recounts that it initiated changes to all its advertising practices well before the firm was contacted by the Enforcement Office. To the extent these revisions did not fully address the Department's regulations and requirements, Ritz Tours believes that it reasonably relied on the advice of a trade association and promptly responded to any remaining errors or omissions brought to its attention by the Department, as well as all subsequent Department inquiries.

In addition, Ritz Tours states that even during the period before it made revisions to its advertising practices, travel agents, its own agents and its web site advised consumers of additional charges and of the total price during the booking process. As a result, consumers learned of the full price of an air tour before they made a decision to purchase it from Ritz Tours, the firm explains. The firm further adds that it did not receive any complaints from customers regarding its price advertising during the period in question. The firm also replies that it has retained regulatory counsel and implemented internal

safeguards to ensure that all online and other advertising, in addition to any communication by its agents, complies with the Department's regulations and other requirements. Finally, Ritz Tours considers that because in its view many of the Department's requirements are not included in codified regulations, the Department should ensure that adequate guidance as to their advertising obligations is made available to air tour operators.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Ritz Tours, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Ritz Tours have reached a settlement in this matter. While neither admitting nor denying the above allegations, Ritz Tours accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Ritz Tours is assessed \$55,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$27,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$27,500 shall be suspended for one year, and then forgiven, unless Ritz Tours violates the cease and desist or payment provisions of the order, in which case the entire sum will become due and payable immediately. The Enforcement Office believes that the assessment of a civil penalty of \$55,000 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 Ritz Tours 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 Ritz Tours, 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, Ritz Tours, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. Ritz Tours, Inc., and all other entities owned and controlled by, or under common ownership and control with Ritz Tours, 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. Ritz Tours, Inc., is assessed \$55,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$27,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$27,500 shall be suspended for one year, and then forgiven, unless Ritz Tours, Inc., violates the cease and desist or payment provisions of the order, in which case the entire sum will become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Ritz Tours, 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;

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; and

7. We order Ritz Tours, Inc., to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of air tours it causes to be published in printed format during the last 30 days of the one-year period following the issuance of this order; and (b) printouts of screen displays advertising air tour prices on its internet site for the 15th day of each month during the one year period following issuance of this order. This material should be submitted within 15 days of the conclusion of the referenced one-year period.

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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