



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

Issued by the Department of Transportation
on the 7th day of July, 2009

Gate 1, Ltd.

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

Docket OST 2009-0001

Served July 7, 2009

CONSENT ORDER

This consent order concerns advertisements by Gate 1, Ltd., (Gate 1) a ticket agent, that violated 14 CFR 399.84 the Department’s rule on full-fare advertising, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices by air carriers and ticket agents. This order assesses a compromise civil penalty of \$50,000 and directs Gate 1 to cease and desist from future similar violations.

As a ticket agent¹, Gate 1 is subject to the prohibition on engaging in unfair and deceptive practices set forth in 49 U.S.C. § 41712 and to the advertising requirements of Part 399 of the Department’s rules, which implement that prohibition. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, 14 CFR 399.84 requires that advertisements specifying airfares and tour package prices with an air component state the full price to be paid by the consumer. Under long-standing enforcement case precedent, the Department has allowed taxes and fees collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from the base fare in advertisements, so long as such taxes and fees are levied by a government entity, are not *ad valorem* in nature, are collected on a per passenger basis, and their existence and amounts are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. With respect to Internet fare listings, these charges may be noted through a prominent link, placed adjacent to the stated fare that takes the viewer to the

¹ A “ticket agent” is defined as “a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.” 49 U.S.C. § 40102(a)(40).

bottom of the screen, or to a separate screen where the nature and amount of such fees are displayed.²

On January 14, 2009, Gate 1 advertised via e-mail tour packages with an airfare component included. Those advertisements quoted prices for trips to various international destinations, including roundtrip airfare, but stated in fine print at the bottom of the advertisement that “[p]rices include promotional code reduction and do not include airport taxes, fees, and September 11th Security Fee.” The fine print, however, did not detail what additional taxes and fees were not included in the quoted price. In addition, there were no hyperlinks placed adjacent to the stated fare that would have taken the viewer to the bottom of the screen, or directly to a separate screen or pop-up where the nature and amount of excluded taxes and fees were displayed.

The advertisement also contained links to Gate 1’s Internet website, on which Gate 1 quoted prices for numerous international tour packages that included roundtrip airfare. Next to those prices there was an asterisk, which lead consumers to a fine print disclaimer at the bottom of the page, which also stated that “[p]rices include promotional code reduction and do not include airport taxes, fees, and September 11th Security Fee,” with no further explanation or prominent hyperlink to an explanation of those taxes and fees.³ Gate 1 published other advertisements which similarly failed to properly detail the nature and amount of additional taxes and fees that could appropriately be stated separately from the advertised price. Gate 1’s Internet advertisements and website violated the full-fare advertising rule, 14 CFR 399.84, and the prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712.

In mitigation, Gate asserts that it has always intended to comply fully with all regulations pertaining to the presentation and advertising of airfare. Any violations of Department regulations were inadvertent. Furthermore, Gate 1 points out that upon receiving notice from the Department’s Office of Aviation Enforcement and Proceedings (Enforcement Office), it took immediate corrective measures and has worked with the Enforcement Office to bring its website into full compliance with Department regulations.

² See Department notices entitled “Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements,” dated November 4, 2004; “Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including ‘Free’ Airfares,” dated September 4, 2003; and “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>.

³ The type and amount of additional taxes and fees was not disclosed until after a consumer began the booking process on Gate 1’s website. The Enforcement Office noted that, at the bottom of all of the pages on Gate 1’s website there was a hyperlink to a “terms & conditions” page. However, the “terms & conditions” page provided an explanation of 40 different items, one of which is entitled “airport taxes and fees.” This method of disclosing the nature and amount of taxes and fees broken out from the advertised base fare does not comport with the Department’s enforcement case precedent, as detailed above, since the hyperlink was not placed adjacent to the advertised fares and did not take the viewer directly to an explanation of the taxes and fees.

The Enforcement Office views seriously the obligation of all ticket agents to comply with the Department's regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. We have carefully considered the facts of this matter, including those provided by Gate 1, Ltd., and believe that enforcement action is necessary. Gate 1, Ltd., for its part, in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.84, and to the assessment of \$50,000 in compromise of potential civil penalties. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with the Department's advertising requirements by Gate 1, Ltd., as well as by other ticket agents.

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 Gate 1, Ltd., has violated 14 C.F.R. 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation, as described above;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Gate 1, Ltd., also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Gate 1, Ltd., and all other entities owned and controlled by, or under common ownership and control with Gate 1, Ltd., and their successors and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. We order Gate 1, Ltd., to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the service date of this order, copies of all advertising material, including print-outs of all versions of its Internet website, that Gate 1, Ltd., has caused to be published since the service date of this order;
6. We assess Gate 1, Ltd., a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$25,000 shall be due and payable in two equal installments. The first payment of \$12,500 shall be due and payable within 30 days after the date of issuance of this order and the second payment of \$12,500 shall be due and payable 90 days after the date of issuance of this order. The remaining \$25,000 shall become due and payable if Gate 1, Ltd., violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the

civil penalty shall become due and payable immediately, and Gate 1, Ltd., shall be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional enforcement action for failure to comply with this order; 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.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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