



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

**Issued by the Department of Transportation
On the 3rd day of September, 2010**

**Lion World Travel Ltd. d/b/a South African
Airways Vacations**

Docket OST-2010-0005

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.80(f) and 399.84**

Served September 3, 2010

CONSENT ORDER

This consent order concerns Internet advertisements by Lion World Travel Ltd. d/b/a South African Airways Vacations (SAAV) that violated 49 U.S.C. § 41712 and 14 CFR Part 399. It directs SAAV to cease and desist from such further violations and assesses the company a compromise civil penalty of \$20,000.

Applicable Law

SAAV is a travel agent that sells air transportation on a foreign air carrier, South African Airways. Engaging in such conduct makes SAAV a “ticket agent” pursuant to 49 U.S.C. § 40102¹ and, therefore, subjects it to the Department’s jurisdiction, including the prohibition on unfair and deceptive practices and unfair methods of competition in 49 U.S.C. § 41712 and the fare advertising requirements in 14 CFR Part 399.

Pursuant to 14 CFR 399.80(f), as a matter of policy, the Department regards certain types of conduct by ticket agents to be unfair and deceptive practices or unfair methods of competition, including “misrepresentations as to fares and charges for air transportation and services connected therewith.” Pursuant to 14 CFR 399.84, advertisements specifying airfares must 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

¹ A ticket agent is “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)(45).

and fees are levied by a government entity, are not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisement where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that: 1) fail to identify immediately the existence and amount of separate additional taxes and fees or 2) separately state carrier-imposed fees, such as fuel surcharges, do not comply with section 399.80(f) or section 399.84 and the Department's related enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.² When such advertisements are caused to be published by a ticket agent, they also violate section 399.80(f) and constitute a separate and distinct violation of section 41712.³

With respect to Internet fare listings, taxes and fees that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fares⁴ that notes that taxes and fees are extra and directly takes the viewer to a pop-up, to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.⁵

Furthermore, in advertisements specifying airfares, failure to adequately disclose essential terms in connection with the purchase of such fares constitutes an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.⁶ Examples of essential terms include advance purchase requirements, capacity controls, minimum-maximum stay requirements, dates of travel restrictions, and blackout dates, round-trip purchase requirements, and double occupancy requirements for hotel/air packages. Failure to adequately disclose double occupancy requirements violates 14 CFR 399.84 and, in advertisements published by a ticket agent, 14 CFR 399.80(f).

In addition, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of

² See, e.g., *British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-6-29 (June 20, 2003).

³ See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 257.5(d), 399.80(f) and 399.84*, Order 2009-11-8 (Nov. 9, 2009).

⁴ For example, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "taxes and fees" set-off as a hyperlink that takes the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.

⁵ See, e.g., *Delta Air Lines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2010-5-30 (May 28, 2010). See also 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>.

⁶ See Department's notice regarding advertising compliance issues, dated March 18, 1996.

domestic and foreign carriers in air transportation originating at airports in the United States. Specifically, section 1510.7 requires air carriers and foreign air carriers to identify this fee *verbatim* as the “September 11th Security Fee” in all advertisements and solicitations for air transportation in which it is not included in the advertised base fare. The Office of Aviation Enforcement and Proceedings (Enforcement Office) considers the failure of a carrier or ticket agent to identify the September 11th Security Fee as required by section 1510.7 to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.⁷

Facts and Conclusions

An Enforcement Office investigation found that, for a period of time in 2010, SAAV advertised numerous tour “specials” on its Internet website that included an air component and stated a price, but did not disclose at the first point where that price was stated the existence and amount of applicable taxes and fees, one of which was the September 11th Security Fee. Rather, this information was disclosed on a subsequent webpage. Furthermore, SAAV did not include a carrier-imposed fuel surcharge in the advertised base prices, instead including it with the government-imposed per person taxes and fees that were additional to the base prices. Failing to provide proper notice of those taxes and fees that may legally be stated separately from the base price and failing to include carrier-imposed fees in the stated price violates 14 CFR 399.80(f) and 399.84, and 49 U.S.C. § 41712. Moreover, SAAV’s failure to specifically identify in the required manner that the September 11th Security Fee was among the additional taxes and fees constitutes a separate and distinct violation of section 41712.

As a final matter, the Enforcement Office found numerous instances on its website where SAAV failed to adequately disclose a double occupancy requirement. It was only after selecting a destination and being taken to a subsequent webpage that consumers were, in the fine print at the bottom of the page, made aware that a double occupancy requirement applied to the price for the tour package. Such failure by SAAV to clearly and conspicuously disclose double occupancy requirements in fare advertisements on its website also violates 14 CFR 399.80(f) and 399.84, and 49 U.S.C. § 41712.

Mitigation

In mitigation and explanation, SAAV states that compliance with DOT's rules is of paramount importance to the company, and notes that the company has no enforcement history with the Department. SAAV states that within hours of receiving the Department’s initial investigation letter, the company began to correct its website display, and completed the work shortly thereafter. Furthermore, SAAV maintains that since then, and at this time, the SAAV site contains the proper disclosures for all additional charges (including the September 11th Security Fee) and the double occupancy requirements. In addition, SAAV notes that its website has no booking capability. SAAV

⁷ See, e.g., *Sceptre Tours, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2010-6-23 (June 28, 2010).

asserts that to book travel, customers had to call a reservations line, where they were notified of all additional charges and purchase requirements before purchase. SAAV states that it has not received any complaints from consumers. Furthermore, SAAV notes that it is a new company (founded in 2008), and it is quite small. SAAV also states that it has had only a small number of bookings since its inception.

Decision

The Enforcement Office has carefully considered the information provided by SAAV and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and SAAV have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, SAAV consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 399.84 and to the assessment of \$20,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. Of that amount, \$10,000 will be paid within 30 days and the rest will be paid immediately if the company violates the terms of this order during the next year.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's advertising requirements.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Lion World Travel Ltd. d/b/a South African Airways Vacations violated 14 CFR 399.80(f) and 399.84 by advertising air tour prices on its Internet website that failed to state the entire price to be paid for the advertised air transportation and by failing to adequately disclose applicable double occupancy requirements, as described above;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 and by failing to disclose the September 11th Security Fee as required by 49 CFR 1510.7, Lion World Travel Ltd. d/b/a South African Airways Vacations has engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Lion World Travel Ltd. and all other entities owned or controlled by Lion World Travel Ltd. and their successors, affiliates, and assignees to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 399.84;

5. We assess Lion World Travel Ltd. a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3. Of this total penalty amount, \$10,000 shall be due and payable within 30 days after the service date of this order. The remaining \$10,000 shall become due and payable if Lion World Travel 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 Lion World Travel Ltd. may be subject to additional enforcement action for failure to comply with this order; and
6. We order Lion World Travel Ltd. to pay the compromise civil penalty specified in ordering paragraph 5 by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions. Failure to pay the compromise civil penalty as ordered shall subject Lion World Travel Ltd. 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.

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:

ROSALIND A. KNAPP
Deputy General Counsel

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