



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

Issued by the Department of Transportation  
On the 18<sup>th</sup> day of October, 2010

**Pacific Holidays, Inc.**

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

**Docket OST 2010-0005**

**Served October 18, 2010**

**CONSENT ORDER**

This consent order concerns Internet advertisements by Pacific Holidays, Inc., that violate the advertisement requirements specified in 14 CFR Part 399 as well as 49 U.S.C. § 41712, which prohibit unfair and deceptive practices. It directs Pacific Holidays to cease and desist from future violations of Part 399 and Section 41712, and assesses the company a compromise civil penalty of \$30,000.

**Applicable Law**

Pacific Holidays is a travel agent that sells air transportation. Engaging in such conduct makes Pacific Holidays a “ticket agent” pursuant to 49 U.S.C. § 40102<sup>1</sup> 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 of 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

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<sup>1</sup> 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).

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 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 entirely to identify the existence and amount of separate additional taxes and fees, 2) include only general statements that additional taxes and fees apply to the advertised base fare, or 3) separate carrier-imposed surcharges from the base fare do not comply with section 399.84 or the Department’s enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of section 41712. 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.<sup>2</sup>

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fare<sup>3</sup> that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, or to a pop-up or a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.<sup>4</sup>

In addition, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11<sup>th</sup> Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify this fee as the “September 11<sup>th</sup> Security Fee” in all advertisements and solicitations for air transportation where it is not included in the advertised base fare.

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<sup>2</sup> 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).

<sup>3</sup> For example, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that takes the viewer directly to the bottom of the screen, or to a pop-up, or directly to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.

<sup>4</sup> 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>.

This office considers the failure of a carrier or ticket agent to identify the September 11<sup>th</sup> Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.<sup>5</sup>

### **Facts and Conclusions**

A recent review of Pacific Holidays' website by the Office of Aviation Enforcement and Proceedings (Enforcement Office) disclosed numerous instances where Pacific Holidays failed to comply with the Department's full-fare advertising rule and case precedent. Pacific Holidays' homepage listed a series of international air-inclusive vacation packages. In some instances, Pacific Holidays displayed fares, but provided no information about the nature and amount of additional taxes and fees, one of which was the September 11<sup>th</sup> Security Fee. In others, Pacific Holidays separately stated from its base fares a carrier-imposed fuel surcharge.

As stated above, Pacific Holidays may not break fuel surcharges out of its base fare and must provide proper notice of the nature and amount of taxes and fees that may properly be stated separately from the base fare. By advertising in the manner described above, Pacific Holidays has violated 14 CFR 399.80(f) and 399.84 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Pacific Holidays states that it takes seriously compliance with DOT rules and its obligations to advertise and sell airfares to consumers in a transparent and lawful manner, that it in no way intended to mislead customers, and that it at all times cooperated with the Department in resolving this matter. Upon notice of the non-conforming fare advertisements, Pacific Holidays further states that it promptly removed them from its website.

### **Decision**

The Enforcement Office has carefully considered the information provided by Pacific Holidays 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 Pacific Holidays have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Pacific Holidays 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 \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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<sup>5</sup> See, e.g., *Sceptre Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2010-6-23 (June 28, 2010).

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 Pacific Holidays, Inc., violated 14 CFR 399.80(f) and 399.84 by advertising fares that failed to state the entire amount to be paid for the advertised air transportation, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, and by not identifying the September 11<sup>th</sup> Security Fee as required by 49 CFR 1510.7, Pacific Holidays, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Pacific Holidays, Inc., and all other entities owned or controlled by, or under common ownership and control with Pacific Holidays, Inc., its successors, affiliates, and assigns, 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 order Pacific Holidays, Inc., to retain copies of all advertising material, including newspaper advertisements and print-outs of all versions of its Internet website, that Pacific Holidays has caused to be published in the one year period following the service date of this order and, upon request, to provide those copies to the Office of Aviation Enforcement and Proceedings;
6. We assess Pacific Holidays, Inc., a compromise civil penalty of \$30,000 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, \$15,000 shall be due and payable in five equal installments of \$3,000 each. The first payment of \$3,000 shall be due and payable within 30 days of the date of issuance of this consent order. The second payment of \$3,000 shall be due and payable within 60 days of the date of issuance of this consent order. The three subsequent equal installments of \$3,000 shall be due and payable within 6 months, 9 months, and 12 months of the date of issuance of this consent order, respectively. The remaining \$15,000 shall become due and payable immediately if Pacific Holidays, Inc. violates this order's cease and desist or payment provisions during the 12 months following the service date of this order and Pacific Holidays, Inc. may also be subject to further enforcement action;

7. We order Pacific Holidays, Inc., to pay the compromise civil penalty assessed in ordering paragraph 6, above, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject Pacific Holidays, to an assessment of interest, penalty, and collection charges under the Debt Collection Act.

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**

(SEAL)

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