



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

Issued by the Department of Transportation
On the Ninth day of February, 2011

Tour Beyond, Inc., d/b/a China Spree
Travel

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

Docket DOT-OST 2011-0003

Served February 9, 2011

CONSENT ORDER

This consent order concerns violations by Tour Beyond, Inc., d/ b/ a China Spree Travel (“China Spree Travel”), of the Department’s advertising requirements specified in sections 399.84 and 399.80(f) of the Department’s regulations (14 CFR 399.84, and 399.80(f)) that also constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs China Spree Travel to cease and desist from future violations and assesses the company a compromise civil penalty of \$35,000.

China Spree Travel, as a ticket agent selling air tour packages, including air and cruise package tours, 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, pursuant to its enforcement case precedent, the Department has permitted air carriers and ticket 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 and departure taxes, so long as their 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 confused about the total amount that must be paid. On the other hand, 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 adjacent to the stated price, that takes the viewer directly to the bottom of the screen, to a pop-up or to a place on a separate screen, where the nature and amount of such fees are displayed.²

Pursuant to 14 CFR 399.80(f), the Department has found that, as a matter of policy, certain types of conduct by ticket agents are unfair and deceptive practices or unfair methods of competition, including “misrepresentations as to fares and charges for air transportation and services connected therewith.”

In addition, the Transportation Security Administration (TSA) has promulgated a regulation, 49 CFR Part 1510, that imposes a security service fee in the amount of \$2.50 per enplanement per passenger (with a \$10 maximum per round trip) on most air transportation originating at airports in the United States. Pursuant to section 1510.7, all direct air carriers are required to identify the security service fee as the “September 11th Security Fee” in advertisements and solicitations for air transportation that separately state the fee. Failure by a ticket agent to identify the September 11th Security Fee as required by section 1510.7 is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

In offering air travel packages from the United States to China, which include air fares, guided tours, cruises, and related amenities. China Spree Travel has promoted its air fares and air travel packages in the United States by means of e-mail solicitations and advertisements that are published in print and on China Spree Travel’s web site, www.Chinaspree.com, and other web sites.

An investigation by the Department’s Office of Aviation Enforcement and Proceedings (“Enforcement Office”) disclosed that the air tour packages

¹ See, e.g., Costa Cruise Lines N.V., Order 2009-9-3.

² See, e.g., Unique Vacations, Order 2010-11-7, China Focus Travel, Order 2010-9-6, JTB Corporation, Order 2008-12-24, Grand Circle Travel Corp, Order 2006-7-23, JetBlue Airways, Inc., Order 2004-2-4, 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>.

promoted by China Spree Travel on its web site and that of others did not comply with Department requirements. Specifically, the listed prices failed to include air-related fuel and service surcharges, which must be included in the advertised price, and failed to include appropriate notice, adjacent to the advertised price, of the amount of government taxes and fees that were not included in the overall air plus land or cruise package price. In addition, the web site failed to disclose prominently and proximately to the air tour price that the prices promoted required a cash purchase.³

For example, the Enforcement Office conducted a search of an e-mail advertisement, “2010 China’s Golden Triangle 10 Days, from only \$888.” In the body of the text under “Features,” there was a list entitled “What’s Included,” which enumerated what the “Tour Fare includes — Transpacific airfare, guided tours including admission, hotel accommodations, and meals.” At the end of the list, there appeared the statement that “Air Taxes & Fees, Fuel Surcharges, China Visa” are “Listed separately.” In the lower quarter of the page, under the sub-heading, “Fees in addition to the listed Pricing,” was the following statement:

U.S.A. & China air taxes and fees: SFO: \$314, JFK: \$322, China Land Only: \$16.

There was no further detailed information about any taxes, nor about any fuel surcharge.

Upon further inquiry, Enforcement Office staff ascertained that, in fact, the applicable taxes and fees amounted to no more than \$110, and not, as stated, \$314 or \$322. China Spree Travel had included the airline-imposed fuel surcharge in the amount the firm designated as “U.S. and China Taxes.” Enforcement Office staff verified that the promotions for numerous other China Spree Travel air tour packages contained virtually identical false statements and violations of the Department’s full-fare advertising requirements.

By failing to include fuel surcharges imposed by carriers in the advertised price of an air ticket or air tour package when it first listed the price, China Spree Travel violated the Department’s regulations and enforcement case precedent. In addition to violating the requirements of sections 399.84 and 399.80(f), and related Department precedent and enforcement policies, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712. China Spree Travel engaged in a separate violation of 49 U.S.C.

³ Not until the fourth scrolled page of a tour’s promotion, could a reader learn that to use any form of credit, a customer must pay an additional \$200 per person.

§ 41712 by failing to identify the September 11th Security Fee as required by section 1510.7.

With regard to fuel surcharges, we recognize the difficulties faced by some companies which may themselves be subject to “fuel surcharges” by airlines in their contracts with carriers in order to secure seats in advance. However, 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 an air tour seller 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 flyers or brochures, a firm can state in its flyers and 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 the current prices can be obtained. Fares held out on the Internet or in newspapers, or orally, however, must be current and available.

In mitigation and explanation, China Spree states that it takes its obligations very seriously regarding compliance with the Department’s full fare advertising rule and policies. Immediately following receipt of notice of the alleged violations, the firm notes that it sought counsel and fully cooperated with the Department. Based on its understanding of the alleged violations, China Spree recounts that it underwent an extensive renovation of all of its advertising, focusing on its web site. These initial changes were made voluntarily with the advice of counsel, and, China Spree further avows, the firm believed these changes adequately addressed the Department’s concerns and brought the firm into compliance with the Department’s rules and policies. When, however, the Department raised the need for subsequent changes to the site concerning additional errors and omissions to the company’s attention, China Spree explains that it immediately underwent a second major renovation of its web site advertising, during which it made changes not only better to comply with the Department’s concerns, but also to simplify the advertising messages, reduce the links and thereby make the website more user friendly for the public. China Spree states that it also sought the assistance and review of the Department during the second revision, and now can declare with assurance that all of its advertising is in full compliance and will remain so.

China Spree indicates that throughout this process -- and before the Department contacted China Spree -- the firm never received any complaints or questions from customers concerning its advertising and pricing. In addition, while the full price of its air tours may not have been evident everywhere in its advertising, China Spree states that its procedures made certain that the full price was known before any customer submitted his final payment for an air

tour. To better ensure that any future advertising fully complies with the Department's rules and policies, China Spree recounts that it has retained counsel to advise management and review communications with the public.

The Enforcement Office has carefully considered all of the information available to it, including that provided by China Spree Travel, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and China Spree Travel have reached a settlement in this matter. While neither admitting nor denying the above allegations, China Spree Travel accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, China Spree Travel is assessed \$35,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$17,500 shall be due and payable as follows: \$7,000 shall be due and payable within 15 days of the date of issuance of this order. Three payments of \$3,500 each shall be due and payable on June 1, 2011, October 1, 2011, and January 1, 2012. Of the remaining portion of the civil penalty amount, \$17,500 shall become due and payable if, within one year of the date of issuance of this order, China Spree Travel violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, China Spree Travel may become subject to additional enforcement action for violation of the order.

The Enforcement Office believes that the assessment of a civil penalty of \$35,000 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 China Spree Travel 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 Tour Beyond, Inc., d/ b/ a China Spree Travel violated 14 CFR 399.84 and 14 CFR 399.80(f), 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, Tour Beyond, Inc., d/ b/ a China Spree Travel engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. We find that by failing to identify the September 11th Security Fee as required by section 1510.7, Tour Beyond, Inc., d/ b/ a China Spree Travel engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;

5. We order Tour Beyond, Inc., d/ b/ a China Spree Travel and all other entities owned and controlled by, or under common ownership and control with Tour Beyond, Inc., d/ b/ a China Spree Travel, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84, 14 CFR 399.80(f), and 49 U.S.C. § 41712;

6. Tour Beyond, Inc., d/ b/ a China Spree Travel is assessed \$35,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 3, and 4 of this order. Of the total penalty amount, \$17,500 shall be due and payable as follows: \$7,000 shall be due and payable within 15 days of the date of issuance of this order; three payments of \$3,500 each shall be due and payable on June 1, 2011, October 1, 2011, and January 1, 2012. Of the remaining portion of the civil penalty amount, \$17,500 shall become due and payable if, within one year of the date of issuance of this order, Tour Beyond, Inc., d/ b/ a China Spree Travel violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, Tour Beyond, Inc., d/ b/ a China Spree Travel may become subject to additional enforcement action for violation of the order;

7. Failure to pay the compromise assessment as ordered shall subject Tour Beyond, Inc., d/ b/ a China Spree Travel 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;

8. Payments 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 transfers shall be executed in

accordance with the instructions contained in the Attachment to this order; and

9. We order Tour Beyond, Inc., d/ b/ a China Spree Travel to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of air tours or air tour components it causes to be published in printed format or circulates as current 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 shall 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

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