



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

Issued by the Department of Transportation
On the Third day of June, 2011

TACA International Airlines, S.A.

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

Docket OST 2011-0003

Served June 3, 2011

CONSENT ORDER

This consent order concerns Internet airfare advertisements by TACA International Airlines, S.A., (TACA) that violate the advertising requirements specified in 14 CFR Part 399.84, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive practices. It directs TACA to cease and desist from future violations of section 399.84 and section 41712, and assesses the carrier a compromise civil penalty of \$55,000.

Applicable Law

As a foreign air carrier, TACA is subject to the advertising requirements of Part 399 of the Department's rules. 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 base fares 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 advertisements where a fare is presented so that

consumers can immediately determine the full fare to be paid.¹ Thus, for example, fare advertisements that fail entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare is displayed or include only general statements regarding the existence of such taxes and fees 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 49 U.S.C. § 41712.²

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of the fees that may be stated separately are shown. In Internet advertising displays, 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 fare that notes that taxes and fees are extra and directly takes the viewer to the bottom of the screen, to a pop-up, or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.³

Facts and Conclusions

For a period of time in 2010 and 2011, TACA employed a program on its website that allowed consumers to search for flights by exact dates or by flexible dates. In responding to searches using either method, TACA provided airfare quotes, either through a fare listing or a fare matrix. The quotes, which were the first time fares were presented to consumers, noted that the fares did not include taxes and fees, but TACA failed to disclose at that time the nature and amount of those taxes and fees in any of the acceptable ways described above.

Mitigation

In mitigation, TACA states that although its disclosures did not conform to the Department's specific requirements, all persons making purchases on TACA's website

¹ On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which is effective October 24, 2011, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

² See, e.g., *Cayman Airways, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-3-5 (March 18, 2011).

³ 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, to a pop-up, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. 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>.

were provided with full tax and fee information prior to completion of their purchase. TACA believes that at no time did any person purchase a ticket on TACA's website without first receiving a full fare quotation, including all taxes and fees. TACA asserts that the improper display of tax and fee information on TACA's website resulted from a software revision, and that it has taken steps to ensure that any future revisions undergo appropriate review to prevent similar future occurrences. TACA believes strongly that these efforts, the availability to all consumers of tax and fee information prior to any purchase, the immediate action TACA took to correct the discrepancies, and its full cooperation in this investigation demonstrate TACA's strong commitment to compliance with the Department's advertising requirements.

Decision

The Department views compliance with the Federal aviation statutes and regulations seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by TACA and continues to believe that enforcement action is warranted. The Enforcement Office and TACA have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, TACA consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$55,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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 by TACA and other sellers of air transportation.

This order is issued under the authority 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 TACA International Airlines, S.A., violated 14 CFR 399.84 by advertising fares that failed to state the entire price to be paid;
3. We find that by engaging in the conduct described in paragraph 2 above, TACA International Airlines, S.A., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order TACA International Airlines, S.A., and all other entities owned or controlled by, or under common ownership and control with TACA International Airlines, S.A., their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with

this cease and desist provision shall subject TACA International Airlines, S.A., and their successors and assignees to further enforcement action;

5. We assess TACA International Airlines, S.A., \$55,000 in compromise of civil penalties that might otherwise be assessed for the violations described in order paragraphs 2 and 3 above. Of this total penalty amount, \$27,500 shall be due and payable within fifteen (15) days of the date of issuance of this order. The remaining \$27,500 shall be due and payable immediately if TACA International Airlines, S.A., violates this order's cease and desist or payment provisions during the twelve (12) months following the service date of this order; and
6. We order TACA International Airlines, S.A., to remit the payment ordered in paragraph 5 above, within fifteen (15) days after the issuance of this order, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject TACA International Airlines, S.A., 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:

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Deputy General Counsel

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