



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

**Issued by the Department of Transportation
On the Twenty-Sixth day of October, 2011**

Viajes Galiana, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 380**

Docket OST 2011-0003

Served October 26, 2011

CONSENT ORDER

This consent order concerns violations of certain consumer protection provisions of the Department of Transportation's (Department) Public Charter regulations during 2011 by Viajes Galiana, Inc., (VGI) a Public Charter operator, stemming from its failure to ensure that its authorized agents complied with the provisions of 14 CFR 380.30 when advertising Public Charter flights on VGI's behalf. These violations also constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs VGI to cease and desist from future similar violations and assesses a compromise civil penalty of \$10,000.

Public Charter operators must comply with the requirements of 14 CFR Part 380, which are designed to prevent economic harm to charter passengers. These rules include certain disclosure requirements with which Public Charter operators must comply when advertising their operations to the public. In particular, under section 380.30, all solicitation materials for a Public Charter (e.g., newspaper, radio, television, or Internet advertisements, brochures, mail solicitations, etc.) must include the name of the charter operator and the name of the direct air carrier. Solicitation materials that state a price per passenger must also include either 1) a statement referring to the operator-participant contract for further information about the conditions applicable to the charter, or 2) the full text of the operator-participant contract. As applicable here, if the charter prospectus names alternative dates or cities, any solicitation that states a price per passenger must also state that the actual dates or cities have not yet been selected, if that is the case. Solicitation materials that name a hotel, but not every hotel named in the operator-participant contract, must state that substitutions may be made. In any solicitation materials from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (i.e., a combination of air transportation and ground accommodations), or a charter tour component (e.g., a hotel stay), any price stated for such charter, tour, or component must be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) began an investigation of VGI in 2010 for advertising air charter service using an invalid Public Charter (PC) number. In late March 2011, the Enforcement Office learned that VGI was advertising its charter program through a Puerto Rican travel agency in a manner that violates 14 CFR Part 380. Specifically, newspaper advertisements for VGI charter vacation packages failed to include the name of the charter operator, the name of the direct air carrier, and either the full text of the operator-participant contract or a statement referring to the operator participant contract for further information about conditions applicable to the charter. According to VGI, the advertisements were published upon its request to the travel agency to market and sell seats on VGI's charter on a space available basis. As a Public Charter operator, VGI must ensure that all advertisements for its charter operations, including those placed by agents on its behalf, comply with the Department's rules. The violations committed by VGI had the potential to cause harm to consumers. By engaging in the conduct described above, VGI violated 14 CFR 380.30 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

In mitigation, VGI emphasizes its intention to comply with the Department's advertising requirements for Public Charters. VGI maintains that the charter discussed above was a joint public policy initiative with the Government of Puerto Rico to create a tourism niche on the west coast of Puerto Rico. VGI explains that the newspaper advertisements for the charter, which admittedly did not comply with 14 CFR Part 380, were placed in good faith by VGI's authorized agents and without any apparent intent to harm competitors. VGI asserts that these advertisements were in compliance with the regulations of the Puerto Rico Tourism Company and were not submitted to VGI prior to being published. VGI maintains that it was unaware of the violations described above when incurred by its authorized agents.

The Enforcement Office has carefully considered all of the information available to it, including that provided by VGI, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and VGI have reached a settlement of this matter. Without admitting or denying the violations described above, VGI agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 380 and 49 U.S.C. § 41712, and to the assessment of \$10,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by VGI and other Public Charter operators.

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 the order as being in the public interest.
2. We find that Viajes Galiana, Inc., violated 14 CFR Part 380.30, as described above, by failing to ensure that its agents complied with the requirements for advertising Public Charter service registered in its name.

3. We find that by engaging in the conduct described in paragraph 2 above, Viajes Galiana, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

4. We order Viajes Galiana, Inc., and all other entities owned and controlled by or under common ownership with Viajes Galiana, Inc., and its successors and assignees, to cease and desist from further violations of 14 CFR Part 380 and 49 U.S.C. § 41712.

5. We assess Viajes Galiana, Inc., a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total amount, \$5,000 is due and payable within 15 days after the service date of this order. The remaining \$5,000 shall become due and payable if Viajes Galiana, Inc., violates this order's cease and desist or payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately.

6. 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 as described in the attached instructions. Failure to pay the penalty as ordered shall subject Viajes Galiana, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order. Viajes Galiana, Inc., may also be subject to additional enforcement action for any violation of this order's cease and desist provision.

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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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