



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

Issued by the Department of Transportation
On the Second day of August, 2012

Pacific For Less, Inc.

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

Docket OST 2012-0002

Served August 2, 2012

CONSENT ORDER

This consent order concerns Internet advertisements by Pacific For Less, Inc., (Pacific) that failed to comply with the Department's full-fare advertising rule, 14 CFR 399.84(a), and constitute an unfair and deceptive practice prohibited by 49 U.S.C. § 41712. It directs Pacific to cease and desist from future violations of Part 399 and section 41712 and assesses Pacific a compromise civil penalty of \$20,000.

Applicable Law

Pacific is a ticket agent¹ and is therefore subject to the advertising requirements of Part 399 of the Department's rules and the prohibitions in 49 U.S.C. § 41712 against engaging in unfair and deceptive practices. To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, 14 CFR 399.84(a) requires that advertisements specifying airfares and tour package prices with an air component state the entire price to be paid by the consumer. Although charges included within the single total price listed, e.g., government taxes, may be described separately or through links or "pop ups" on websites

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).

that display the total price, such descriptions may not be false or misleading, may not be displayed as prominently as the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per-passenger basis that accurately reflects the cost of the item covered by the charge. Violations of section 399.84(a) also constitute violations of section 41712.

Facts and Conclusions

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed a lack of compliance by Pacific with the Department's full-fare advertising rule. A review of Pacific's website showed that, for a period of time after January 2012, the company advertised prices for tour packages with an air component that did not include the entire price to be paid by the consumer and, therefore, failed to meet the requirements of 14 CFR 399.84(a). More specifically, the advertised prices of tour packages were followed by an asterisk that referred consumers to a statement at the bottom of the page that indicated that taxes and fees were additional. Such conduct also constitutes an unfair and deceptive practice prohibited under 49 U.S.C. § 41712.

Mitigation

In mitigation, Pacific states that any violations of the Department's advertising regulations were inadvertent. Pacific asserts that it has always worked with each customer during the booking process to ensure that they fully understand the total cost of their vacation, including any taxes and fees charged to the consumer, and that it has never received any consumer complaints relating to its advertising. According to Pacific, upon receipt of the Department's investigation letter, it took immediate action to comply with the Department's regulations and brought its website into full compliance in a very short period of time.

Decision

The Enforcement Office has carefully considered the information provided by Pacific and believes that enforcement action is warranted. The Enforcement Office and Pacific have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Pacific consents to the issuance of this order to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a) and to the assessment of \$20,000 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 airfare advertising regulations.

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 Pacific For Less, Inc., violated 14 CFR 399.84(a) by failing to advertise the entire price to be paid by consumers for tour packages with an air component;
3. We find that by engaging in the conduct and violations described in ordering paragraphs 2, above, Pacific For Less, Inc., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
4. We order Pacific For Less, Inc., and all other entities owned or controlled by, or under common ownership and control with Pacific For Less, Inc., their successors and assignees, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a). Failure to comply with this cease and desist provision shall subject Pacific For Less, Inc., and its successors and assignees to further enforcement action;
5. We assess Pacific For Less, Inc., \$20,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$10,000, shall be due and payable as follows: \$2,500 shall be due and payable within 15 days of the date of issuance of this order, and 3 additional payments of \$2,500 each shall be due and payable on December 1, 2012, April 1, 2013, and August 1, 2013. The remaining portion of the civil penalty amount, \$10,000, shall become due and payable if, before August 15, 2013, Pacific For Less, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Pacific For Less, Inc., may become subject to additional enforcement action for any violation of the order; and
6. We order Pacific For Less, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Pacific For Less, 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.

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:

SAMUEL PODBERESKY

**Assistant General Counsel for
Aviation Enforcement and Proceedings**

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