



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

Issued by the Department of Transportation  
On the Twenty-Fifth day of January, 2013

**Legendary Journeys, Inc.**

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

**Docket OST 2013-0004**

**Served January 25, 2013**

**CONSENT ORDER**

This consent order concerns Internet advertisements by Legendary Journeys, Inc., (Legendary Journeys) that failed to comply with the Department's full-fare advertising rule, 14 CFR 399.84(a), and constituted an unfair and deceptive practice prohibited by 49 U.S.C. § 41712. It directs Legendary Journeys to cease and desist from further similar violations of section 399.84(a) and section 41712 and assesses Legendary Journeys a compromise civil penalty of \$40,000.

**Applicable Law**

Legendary Journeys is a ticket agent<sup>1</sup> and is therefore subject to the advertising requirements of Part 399 of the Department's rules and the prohibition 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 air travel purchase decisions, 14 CFR 399.84(a) requires that advertisements specifying air fares and tour package prices with an air component state the entire price to be paid by the consumer. Although charges included within the single

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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).

total price listed, e.g., government taxes, may be described separately, including through links or “pop ups” on websites 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. Furthermore, applying government-imposed taxes and fees as well as agent-imposed fees to air fare advertised as “free” violates section 399.84(a) because the advertised price of the air fare, which is ostensibly “free,” is not the entire price of the air fare to be paid by the consumer.<sup>2</sup> Accordingly, a ticket agent cannot advertise an air fare as “free,” then impose charges when the consumer attempts to obtain the “free” travel.<sup>3</sup> 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) found that Legendary Journeys advertised cruise packages with an air component that did not state the entire price to be paid by the consumer. Specifically, Legendary Journeys’ website displayed prices for air/cruise packages that, instead of showing the entire price to be paid by the consumer, included language in a disclaimer paragraph toward the bottom of the advertisement stating that taxes, agent-imposed fees, and other applicable fees would be added.<sup>4</sup>

Furthermore, Legendary Journeys included the phrase “FREE AIR” or “INCLUDES FREE AIR” adjacent to the stated price on its cruise-package advertisements. The use of the phrase “FREE AIR” was deceptive because the air fare was not actually free as claimed by the ticket agent. Consumers were given the option of either purchasing the cruise package with air for the advertised price plus taxes and fees, or purchasing the package without air, in which case the consumer would receive a \$100-\$200 “credit.” Such conduct violates the requirements of 14 CFR 399.84(a) and constitutes an unfair and deceptive practice prohibited under 49 U.S.C. § 41712.

### **Mitigation**

In mitigation, Legendary Journeys states that its primary business is the sale of cruise packages, not air transportation. Legendary Journeys further states that only a small number of the travel packages advertised on its website include an air component. Legendary Journeys states that its website is intended to be an information source and

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<sup>2</sup> See *Guidance on the Use of the Term “Free” in Air Fare Advertisements and Disclosure of Consumer Costs in Award Travel*, May 17, 2012, available at <http://www.dot.gov/individuals/air-consumer/guidance-use-word-free-advertisements>.

<sup>3</sup> As noted in in our May 17, 2012, *Guidance on the Use of the Term “Free”*, nothing in the Department’s full-fare advertising rule or our guidance prevents a carrier from truthfully stating that air transportation may be obtained “free of carrier charges” or “without carrier charges,” provided that taxes and government fees are properly disclosed.

<sup>4</sup> See *Additional Guidance on Air Fare/Air Tour Price Advertisements*, February 21, 2012, available at <http://www.dot.gov/individuals/air-consumer/additional-guidance-airfare-and-air-tour-price-advertisements>.

that it does not allow consumers to book travel via its website. According to Legendary Journeys, there is no live merchant payment process and every reservation requires contact with a live agent to complete the transaction. Legendary Journeys states that upon receipt of the Department's investigation letter, it took the necessary action to comply with the Department's regulations and immediately brought its website into full compliance.

### **Decision**

The Enforcement Office has carefully considered the information provided by Legendary Journeys but continues to believe that enforcement action is warranted. The Enforcement Office and Legendary Journeys have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Legendary Journeys 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 \$40,000 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 air fare advertising regulations.

This order is issued under the authority contained in 49 CFR Part 1.

### **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 Legendary Journeys, 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 paragraph 2, above, Legendary Journeys, Inc., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
4. We order Legendary Journeys, Inc., and all other entities owned or controlled by, or under common ownership and control with Legendary Journeys, 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 these entities to further enforcement action;
5. We assess Legendary Journeys, Inc., \$40,000 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, \$20,000 shall be

due and payable as follows: \$1,000 shall be due within 30 days of the date of issuance of this order, \$5,000 shall be due on April 1, 2013, \$5,000 shall be due on August 1, 2013, \$5,000 shall be due on December 1, 2013, and \$4,000 shall be due on April 1, 2014. Any unpaid portion of the civil penalty amount shall become due and payable immediately if, between the date of issuance of this order and May 1, 2014, Legendary Journeys, Inc., violates this order's cease and desist or payment provisions, in which case Legendary Journeys, Inc., may become subject to additional enforcement action for any violation of the order; and

6. We order Legendary Journeys, Inc., to pay the penalty through Pay.gov 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 Legendary Journeys, 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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