



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

Issued by the Department of Transportation
on the 19th day of September, 2006

TACA International Airlines, S.A.

Violations of 49 U.S.C. § 41712 and
14 CFR Part 399

Docket OST 2006-23528

Served: September 19, 2006

CONSENT ORDER

This consent order concerns advertising of air transportation by TACA International Airlines, S.A. (TACA), a foreign air carrier, that violated the Department's full fare advertising rule, 14 CFR 399.84 and constituted an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712. This order directs TACA to cease and desist from future violations and assesses a compromise civil penalty of \$50,000.

TACA, as a foreign air carrier, is subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Section 399.84 requires that any advertising of passenger air transportation, a tour, or a tour component that states a price must state the full price to be paid by the consumer. Pursuant to its enforcement case precedent the Department permits taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges and departure taxes, to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. (See, e.g., *JetBlue Airways, Inc.*, Order 2004-2-4, February 3, 2004;

Icelandair, Order 2003-4-9, April 10, 2003; Notice entitled "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and Notice entitled "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>). Fuel surcharges and other carrier-imposed charges, however, are not among these exceptions and must be included in the advertised fare. Violations of section 399.84 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

TACA published advertisements in multiple major newspapers, including *The Washington Post*, *The New York Times*, *The Boston Globe*, *Chicago Tribune*, *Los Angeles Times*, *Miami Herald* and *San Francisco Chronicle*, entitled "Costa Rica Adventure in the Green Season—From \$482." The text of the body of that advertisement continues: "Air Only. Round trip. Price includes surcharges." In the fine print, the advertisement states: "U.S. taxes and Costa Rica airport tax and surcharges are not included" without stating any amount.

The publication by TACA of advertisements promoting air travel tours to Costa Rica in multiple major newspapers that failed to provide proper notice of the nature and amount of additional taxes, fees and surcharges that would be added to the advertised fare violated 14 CFR 399.84, the Department's rule on full fare advertising. These advertisements, in addition, constituted an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation and explanation, TACA states the advertisements at issue in this matter were developed through a joint effort involving TACA, the Costa Rica Ministry of Tourism and the various tour operators identified in the advertisements, including LatinEscapes and WorldLinks. In TACA's view, this diffusion of responsibility contributed significantly to the failures that TACA has recognized in agreeing to the settlement embodied in this Consent Order. To prevent the publication of future advertising that might not conform to the Department's regulations and enforcement precedent, therefore, TACA declares that the firm has taken steps to ensure that all of its promotional activities undergo several layers of review by TACA personnel, who have been trained to recognize non-complying advertisements. TACA recounts that it has already initiated the revision of its in-house review, and that, as of this time, the majority of TACA's advertisements already undergo two types of pre-publication review to ensure that the Department's requirements are fully met.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by TACA, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and TACA have reached a settlement of this matter. TACA consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712, and to the assessment of \$50,000 in compromise of potential civil penalties. Of this total penalty amount, \$25,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$25,000 shall be suspended for one year following issuance of this order, and then forgiven, unless TACA violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. We believe that the compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by TACA, as well as by other airlines and companies engaged in the sale of air tours and 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 TACA International Airlines, S.A., violated 14 CFR 399.84 by advertising fares that were not the full price for the advertised air transportation;
3. We find that TACA International Airlines, S.A., by violating 14 CFR 399.84 as described above, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. TACA International Airlines, S.A., and all other entities owned or controlled by TACA International Airlines, S.A., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR Part 399;

5. TACA International Airlines, S.A., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of this total penalty amount, \$25,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$25,000 shall be suspended for one year following issuance of this order, and then forgiven, unless TACA International Airlines, S.A., violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject TACA International Airlines, S.A., 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; and
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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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