



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

**Issued by the Department of Transportation  
On the Ninth day of January, 2012**

**Imagine Tours & Travel, L.L.C.**

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

**Docket OST 2012-0002**

**Served January 9, 2012**

**CONSENT ORDER**

This consent order concerns advertisements of air tours by Imagine Tours & Travel, L.L.C., (ITT) that violated 14 CFR 399.84, the Department's rule requiring disclosure of the full fare in advertising, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices by air carriers and ticket agents. This order assesses a compromise civil penalty of \$30,000 and directs ITT to cease and desist from future similar violations.

**Applicable Law**

As a ticket agent, ITT is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, airfare advertisements 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 the base fare 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 advertisement where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees, 2) include only general statements regarding the existence of such taxes and fees, or 3) separately state carrier- or agent-imposed fees, such as fuel or service surcharges, 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.<sup>1</sup>

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fares that notes that taxes and fees are extra and directly takes the viewer 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.<sup>2</sup>

### **Background**

An investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) disclosed that ITT's website (<http://www.ittworld.com/>) and print brochures advertised numerous international air tour packages with prices that included roundtrip airfare, but that failed to detail the nature and amount of additional taxes and fees were excluded from the advertised price. Furthermore, in ITT's print brochures associated with its tour packages, ITT included a "Fine Print" disclaimer at the end of the brochure that denoted items not included in the price, such as taxes and fees, in a separate box. However, ITT failed to state the nature and amount of those taxes and fees. Additionally, in the fine print section in many of its brochures, ITT noted that the price did not "include fuel surcharges which may be imposed by airlines" and noted that it "reserves the right to add a surcharge if the dollar declines by more than 5% against the Euro based on foreign exchange rates in effect." Accordingly, ITT's advertisements violated the Department's full-fare advertising rule, 14 CFR 399.84, and the prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712.<sup>3</sup>

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<sup>1</sup> See, e.g., *US Airways, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2011-6-2 (June 2, 2011); *Delta Air Lines, Inc. Violations of 49 U.S.C. § 41712 and 14 CFR 399.84* Order 2010-5-30 (May 28, 2010). On April 20, 2011, after the initiation of the Department's inquiry regarding ITT, 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 January 24 or 26, 2012, depending on the outcome of a pending rulemaking, 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.

<sup>2</sup> For example, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that takes the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed. See also 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>.

<sup>3</sup> See, e.g., *Gate 1, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-7-5 (Jul. 7, 2009); *Ritz Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-2-22 (Feb. 15,

With regard to fuel surcharges, we recognize the difficulties faced by some companies who may themselves be subject to “fuel surcharges” by airlines in their contracts with carriers in order to secure seats in advance. However, once a firm quotes through its advertising a specific price for a flight, tour or tour component, the firm must charge that price to the consumer. When an air tour seller advertises a specific price for a flight, tour or tour component, it must have available a reasonable inventory at the advertised price for a reasonable time period. To preclude there being a deceptive practice issue for flyers or brochures, a firm can state in its flyers and brochures that the prices it is advertising are good “as of” or “until” a date certain, and advise the consumer that availability of the advertised fares may be limited and current fares may be higher, with notice as to where the current prices can be obtained. Fares held out on the Internet or in newspapers, or orally, however, must be current and available.<sup>4</sup>

### **Mitigation**

In mitigation, ITT states that compliance with the Department’s rules is of paramount importance to ITT and ITT has no enforcement history with the Department. ITT states that it has no record of receiving any customer complaints with regard to any of the issues raised in this inquiry. Additionally, it was never ITT’s intention to deliberately disregard any of the Department’s regulations or to mislead customers in any way. Furthermore, immediately upon learning of this inquiry, ITT states that it took immediate steps to modify its website and promotional materials to address the areas of concern. Further, ITT points out that it has fully cooperated with the Department with regard to this inquiry. ITT maintains that, since these modifications, the ITT Website and promotional materials contain the proper disclosures for all additional charges. ITT is willing to work with the Department in any way to ensure future compliance.

Further, ITT asserts that there are certain difficulties and exigencies in the airline ticketing industry that make it virtually impossible for ITT to be able to predict the final taxes, fees and fuel surcharges that will be imposed by the airlines. In spite of these difficulties, ITT states that it does not implement, and has not implanted, any post-purchase price increases. Advertised prices are based on current taxes, fees and fuel surcharges. In the event that a fuel charge increase is imposed by an airline after the time of purchase (the date on which the full amount has been paid by the customer), ITT absorbs that additional cost and the amount is not passed on to the customer.

### **Decision**

The Enforcement Office views seriously the obligation of all ticket agents to comply with the Department’s regulations and to observe the statutory prohibition against

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2008); *Trafalgar Tours West, Inc., d/b/a Trafalgar Tours, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2007-8-24 (Aug. 24, 2007).

<sup>4</sup> See, e.g., *Tour Beyond, Inc., d/b/a China Spree Travel, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and 399.80(f)*, Order 2010-2-6 (Feb. 9, 2011).

engaging in unfair and deceptive practices. We have carefully considered the facts of this matter, including those provided by Imagine Tours & Travel, L.L.C., and believe that enforcement action is necessary. Imagine Tours & Travel, L.L.C., for its part, in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 14 CFR 399.84 and of 49 U.S.C. § 41712, and to the assessment of \$30,000 in compromise of potential civil penalties. We believe that this compromise assessment is appropriate and serves the public interest. It represents a strong deterrent to future noncompliance with the Department's advertising requirements by Imagine Tours & Travel, L.L.C., as well as by other ticket agents.

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 Imagine Tours & Travel, L.L.C., has violated 14 CFR 399.84 by causing to be published air inclusive tour packages that failed to state the entire price to be paid for the advertised air transportation, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, Imagine Tours & Travel, L.L.C., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Imagine Tours & Travel, L.L.C., and all other entities owned or controlled by, or under common ownership and control with Imagine Tours & Travel, L.L.C., and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Imagine Tours & Travel, L.L.C., and its successors and assignees to further enforcement action;
5. Imagine Tours & Travel, L.L.C., is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$15,000 shall be due and payable within 30 days of the date of the issuance of this consent order. The remaining \$15,000 shall become due and payable if Imagine Tours & Travel, L.L.C. violates this order's cease and desist or payment provisions during the 12 months following the service date of this order in which case the entire unpaid portion of the civil penalty shall become due and payable immediately and Imagine Tours & Travel, L.L.C. may be subject to further enforcement action for failure to comply with this order;
6. Payments 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. Failure to pay the compromise penalty assessment as ordered will subject Imagine Tours & Travel, L.L.C., to an assessment of interest, penalty, and collection charges under the Debt Collection Act.

This order will become a final order of the Department ten 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

**(SEAL)**

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