



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

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

South African Airways PTY Limited

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

Docket DOT-OST 2011-0003

Served October 24, 2011

CONSENT ORDER

This consent order concerns violations by South African Airways PTY Limited (“South African Airways”) of the Department’s advertising requirements specified in section 399.84 of the Department’s regulations (14 CFR 399.84) that also constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs South African Airways to cease and desist from future violations and assesses the company a compromise civil penalty of \$55,000.

South African Airways is a foreign air carrier holding authority pursuant to 49 U.S.C. § 41301, and, as such, is subject to the advertising requirements of Part 399 of the Department’s rules. Under 14 CFR 399.84, any advertising that states a price for air transportation or an air tour is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or ticket agent for such air transportation, tour or tour component. However, pursuant to its enforcement case precedent, the Department has permitted air carriers and ticket agents to state separately from the advertised price taxes and fees imposed by a government on a per-passenger basis, such as passenger facility charges and departure taxes, so long as their amounts appear or are indicated clearly in the advertisement at the first point in the advertisement where a fare is

presented so that the consumer can determine the full price to be paid.¹ Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised price, lest consumers be confused about the total amount that must be paid. On the other hand, carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, must be included in the advertised price. With respect to airfares and air tours advertised on the Internet, taxes and fees that are permitted to be excluded from the advertised price may be noted in a prominent link, placed adjacent to the stated price,² that takes the viewer directly to the bottom of the screen, to a pop-up or to a place on a separate screen, where the nature and amount of such fees are displayed.³

In addition, the Transportation Security Administration (TSA) has promulgated a regulation, 49 CFR Part 1510, that imposes a security service fee in the amount of \$2.50 per enplanement per passenger (with a \$10 maximum per round trip) on air transportation originating at airports in the United States. Pursuant to section 1510.7, all direct air carriers are required to identify the security service fee as the “September 11th Security Fee” in advertisements and solicitations for air transportation that separately state the fee. The Department views the failure by an airline or its agent to identify the September 11th Security Fee, as required by section 1510.7, or to state the amount of the fee when it is not part of the base fare, to be an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

South African Airways has promoted its air fares and air travel packages from the United States to South Africa and other African, European and Asian countries by means of e-mail solicitations and advertisements that are published in print and on South African Airways’ web sites, www.southafricanairways.com, www.flysaavacations.com, www.flysaa.com, and other web sites.

On September 3, 2010, the Department issued Order 2010-9-5, a consent order involving Lion World Travel Ltd. d/b/a South African Airways Vacations, which marketed air tours using South African Airways under the South African Airways

¹ See, e.g., Costa Cruise Lines N.V., Order 2009-9-3.

² See, e.g., Tour Beyond, Inc., d/b/a China Spree Travel, Order 2011-2-6, Unique Vacations, Order 2010-11-7, China Focus Travel, Order 2010-9-6, Grand Circle Travel Corp, Order 2006-7-23, JetBlue Airways, Inc., Order 2004-2-4, and orders cited therein, and the notice entitled: Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including “Free” Airfares, which is dated September 4, 2003, as well as guidance letters to the industry which can be found at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

³ On April 20, 2011, 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, 2012, 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 or insurance surcharges, or convenience fees, from advertised fares will remain in effect.

Vacations brand. The order found that Lion World Travel d/b/a South African Airways Vacations violated the Department's full fare advertising rule and directed Lion World Travel d/b/a South African Airways Vacations to cease and desist from further violations and assessed the company a compromise civil penalty of \$20,000. Although the order did not find violations by South African Airways itself, clearly the carrier was put on notice of the violations found against the carrier's partner, which was marketing its air tour service under the South African Airways Vacations brand.⁴

In Order 2010-9-5, the Department reiterated that it also requires that advertisements adequately disclose significant restrictions in fare advertisements. The Department considers double occupancy requirements for air tour packages to be such a significant restriction. Failure adequately to disclose these significant requirements for hotel/air packages likewise violates 14 CFR 399.84.

An investigation by the Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") disclosed that, for a period of time in late 2010 and early 2011, air tour packages promoted by South African Airways on its web sites and those of others did not comply with Department requirements. More specifically, the listed prices did not properly identify the existence, nature or amount of additional taxes and fees stated in these solicitations, including the September 11th Security fee. For example, the Enforcement Office conducted a search of an Internet advertisement on the home page of South African Airways' site. The advertisement consisted of a picture of a South African Airways airplane and stated: "*SAA Vacation Package*" -- "*Includes air, hotel & more!*" Next to that advertisement, another promotion stated: "*Luxury Botswana Vacation*" -- "*From \$4,799* p/p Includes, air, hotel & more!*" When users continued by clicking on the hyperlink next to either package, they were taken to the South African Airways Vacations web site to a heading entitled, "*SPECIALS.*" Only after users selected a specific vacation package and were taken to yet another web page were they able to learn that taxes and fees were extra, and that restrictions such as double occupancy purchase requirements applied, under what was denoted as the "Terms" of the air tour package.⁵ There was no mention proximate to the advertised fare that taxes and

⁴ The Department learned that on December 14, 2010, South African Airways terminated its contract with Lion World Vacations Ltd., and on December 15, 2010, Destination Southern Africa began its operations under its contract with South African Airways to market the carrier's flights in conjunction with the tour operator's land package tours, which is implemented through the airline's air tour package web site, www.flysaavacations.com.

⁵ **Terms**

*Prices are per person based on double occupancy accommodations and include fuel surcharges. Government taxes, departure fees and September 11th Security Fee of up to \$210 are additional and payable prior to departure. Package prices are valid as of January 1st, 2011. Prices are valid for new bookings only, subject to availability, may change without notice, and are not retroactive. Blackouts, peak period surcharges, cancellation charges, and other restrictions may apply.

fees were additional, nor that significant restrictions apply. Enforcement Office staff was able to verify that other promotions contained virtually identical violations of the Department's full-fare advertising requirements. From South African Airways' web site, a customer pursuing additional information was ultimately transferred to South African Airways Vacations' web site, www.flysaavacations.com, which is operated for South African Airways by Destination Southern Africa, Inc.

Accordingly, South African Airways' advertisements on its web sites and those of its agents did not meet Department requirements. By failing to provide appropriate notice on the first screen where the cost of the air tour trip was first revealed of the amount of government taxes and fees that are permitted to be broken out of the price that is displayed, and by failing to disclose the existence of significant restrictions associated with its air tour prices, such as double occupancy requirements, when the price was first listed, South African Airways violated the Department's full fare regulation and enforcement case precedent, which remain in effect through January 24, 2012.⁶

In addition to violating the requirements of section 399.84 and related Department precedent and enforcement policies, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712. South African Airways engaged in a separate violation of 49 U.S.C. § 41712 by failing to identify the September 11th Security Fee as required by 49 CFR 1510.7.

In mitigation and explanation, South African Airways states that it strives to comply with all of the Department's regulations, and that the web site errors were completely inadvertent. Immediately after South African Airways and Destination Southern Africa were informed of the Department's concerns via a telephone call, the companies recount that they began to correct the errors on the web sites. In fact, they recall, the majority of the problems were fixed before any formal written notice by the Department was received by South African Airways or Destination Southern Africa. According to the companies, the web sites have remained in compliance with the Department's rules since that time, and the companies have taken steps to ensure that these errors do not occur in the future. The companies also note that during the time of the inadvertent errors, South African Airways was in the process of executing a transition of its South African Airways Vacations contract from a previous contractor to Destination Southern Africa. As a result, Destination Southern Africa and South African Airways declare that there was very little commercial activity for South African Airways Vacations during the period of time that the advertisements were not in compliance.

The Enforcement Office has carefully considered all of the information available to it, including that provided by South African Airways, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and South African Airways have reached a settlement in this matter. While neither admitting nor denying the above allegations, South African Airways

⁶ See footnote 3 *infra*.

accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, South African Airways is assessed \$55,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301.

The Enforcement Office believes that the assessment of a civil penalty of \$55,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to unlawful conduct in the future by South African Airways and other sellers of air tours and 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 South African Airways PTY Limited violated 14 CFR 399.84, as described above, by causing to be published advertisements that failed to state the entire price to be paid for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, by failing properly to disclose significant restrictions, and by failing to identify the September 11th Security Fee as required by 49 CFR 1510.7, South African Airways PTY Limited engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
4. We order South African Airways PTY Limited, and all other entities owned and controlled by, or under common ownership and control with South African Airways PTY Limited, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. South African Airways PTY Limited is assessed \$55,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order, which shall be due and payable within 15 days of the date of issuance of this order. If South African Airways PTY Limited violates this order's cease and desist provisions or fails to comply with this order's payment provisions, South African Airways PTY Limited may become subject to additional enforcement action for violation of the order and the Department's statute and regulations;
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. Failure to pay the

compromise assessment as ordered shall subject South African Airways PTY Limited 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

7. We order South African Airways PTY Limited to retain for a period of two years following the issuance of this order copies of all advertisements of air tours or air tour components it causes to be published in printed format or circulates as current including Internet advertisements during the one-year period following issuance of this order. This material shall be provided to the Office of Aviation Enforcement and Proceedings upon request.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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