



**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**

**Destination Southern Africa, Inc., and
Destination Southern Africa d/b/a
South African Airways Vacations**

**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 Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations (collectively "Destination Southern Africa") 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 Destination Southern Africa to cease and desist from future violations and assesses the company a compromise civil penalty of \$20,000.

Destination Southern Africa, doing business under its own name and also as South African Airways Vacations, is a ticket agent selling air package tours, including air and land tour components. It is thus subject to the advertising requirements of Part 399 of the Department's rules. Destination Southern Africa currently operates the South African Airways Vacations air tour brand, under contract with South African Airways, a foreign air carrier.

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, 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.^{2 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 most 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.

In offering air travel packages from the United States to South Africa and other African countries that include air fares, guided tours, safaris, and related amenities, Destination Southern Africa has executed dual functions. It has promoted South African Airways’ air travel packages in the United States by means of e-mail promotions and solicitations, and advertisements that are broadcast on the radio, and

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

² See, e.g., Lion World Travel, Ltd., d/b/a South African Airways Vacation, Order 2010-9-5, Tour Beyond, Inc., d/b/a China Spree Travel, Order 2011-2-6, Unique Vacations, Order 2010-11-7, 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 shall remain in effect.

published on www.flysaavacations.com, which is owned by South African Airways, but operated under contract on the carrier's behalf by Destination Southern Africa d/b/a South African Airways Vacations. At the same time, Destination Southern Africa has promoted its own air travel packages on its own site, www.myafricavacation.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 at that time marketed air tours using South African Airways for the air portion under the South African Airways' air tour brand. The order directed South African Airways Vacations to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 14 CFR 399.84 and assessed Lion World Travel a compromise civil penalty of \$20,000.⁴

In Order 2010-9-5, the Department reiterated its longstanding policy of requiring that advertisements adequately disclose significant restrictions, such as advance purchase requirements, capacity controls, minimum-maximum stay requirements, and dates of travel restrictions and blackout dates in fare advertisements. The order specifically noted that the Department considers double occupancy requirements for tour packages including air and hotel 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 the air tour packages promoted by Destination Southern Africa d/b/a South African Airways Vacations on the South African Airways Vacations' web site, www.flysaavacations.com, did not comply with Department requirements. This was likewise true of the air tour package advertisements displayed on Destination Southern Africa's own web site, www.myafricavacation.com. More specifically, in both cases, 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 staff conducted a search starting with an Internet advertisement found first 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 similar promotion stated: "*Luxury Botswana Vacation*" -- "*From \$4,799* p/p Includes air, hotel & more!*" When staff continued by selecting the appropriate button, they were transferred directly to a link on the South African Airways Vacations web site entitled, "*SPECIALS.*" Only when staff then selected a specific vacation package and were taken to yet another web page were they able to

⁴ On December 14, 2010, South African Airways terminated its contract with Lion World Vacations, Ltd., and on December 15, 2010, Destination Southern Africa initiated its contract with South African Airways, to manage the carrier's air and land package tours, and took over the management of the web site, www.flysaavacations.com.

learn that taxes and fees, including the September 11th Security Fee, were extra and that restrictions may apply under what was denoted as the “Terms” of the air tour package. Furthermore, there was no mention adjacent to the advertised fare that taxes and fees were extra or that a double occupancy restriction applied.

Our staff was able to verify that the promotions for numerous other air tour packages on South African Airways Vacations’ web site as well as on Destination Southern Africa’s own web site contained virtually identical violations of the Department’s full-fare advertising requirements.

By failing to provide appropriate notice at the point where the cost of an air tour trip was first revealed of the existence and 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 the price of its air tour packages, such as double occupancy requirements, when the price was first listed, Destination Southern Africa violated the Department’s regulations and enforcement case precedent.

In addition to violating the requirements of section 399.84 and related Department precedent and enforcement policies, Destination Southern Africa’s practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712. Destination Southern Africa 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, Destination Southern Africa states that it takes very seriously its obligation to comply with the Department’s regulations. Immediately after Destination Southern Africa and South African Airways 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 written notice by the Department was received by Destination Southern Africa or South African Airways. 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 Destination Southern Africa, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Destination Southern Africa and Destination Southern Africa d/b/a South African Airways Vacations have reached a settlement in this matter. While neither admitting nor denying the above allegations, Destination

Southern Africa and Destination Southern Africa d/b/a South African Airways Vacations accept the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Destination Southern Africa and Destination Southern Africa d/b/a South African Airways Vacations are assessed \$20,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. The penalty amount is to be remitted in three payments as described in Ordering Paragraph 5, below.

The Enforcement Office believes that the assessment of a civil penalty of \$20,000 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 Destination Southern Africa and Destination Southern Africa d/b/a South African Airways Vacations 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 Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations violated 14 CFR 399.84, as described above, by causing to be published advertisements that failed to state the entire price to be paid by the passenger to the firms for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, and by failing to identify the September 11th Security Fee as required by 49 CFR 1510.7, Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations and all other entities owned and controlled by, or under common ownership and control with Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84, and 49 U.S.C. § 41712;

5. Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations are assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Of this total penalty amount, \$10,000 shall be due and payable in three payments. The first payment of \$4,000 shall be due and payable within 15 days of the date of issuance of this order. Two additional payments of \$3,000 each shall be due and payable on February 1, 2012, and May 1, 2012. If Destination Southern Africa, Inc., or Destination Southern Africa d/b/a South African Airways Vacations violates this order's cease and desist provisions or fails to comply with this order's payment provisions, Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations may become subject to additional enforcement action for violation of the order and the Department's statute and regulations;

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 assessment as ordered shall subject Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations 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 Destination Southern Africa, Inc., and Destination Southern Africa d/b/a South African Airways Vacations to retain for two years following the issuance of this order copies of all advertisements of air tours or air tour components they cause to be published in printed format or circulate as current, including on their Internet web sites during the one-year period following the 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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