



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

Issued by the Department of Transportation
On the Twenty-Second day of July, 2010,

Nuevo Mundo Travel Agency Inc.

**Violations of 49 U.S.C. § 41712
and 14 CFR 399.80(f) and 399.84**

**Docket OST 2010-0005
Served July 22, 2010**

CONSENT ORDER

This consent order concerns newspaper advertisements by Nuevo Mundo Travel Agency, Inc., (Nuevo Mundo) that violated 49 U.S.C. § 41712 and 14 CFR Part 399. It directs Nuevo Mundo to cease and desist from such future violations and assesses the company a compromise civil penalty of \$30,000.

Applicable Law

Nuevo Mundo is a travel agent that sells air transportation. Engaging in such conduct makes Nuevo Mundo a “ticket agent” pursuant to 49 U.S.C. § 40102¹ and therefore subjects it to the Department’s jurisdiction, including the prohibition on unfair and deceptive practices and unfair methods of competition in 49 U.S.C. § 41712 and the fare advertising requirements of 14 CFR Part 399.

Pursuant to 14 CFR 399.80(f), as a matter of policy, the Department regards certain types of conduct by ticket agents to be unfair and deceptive practices or unfair methods of competition, including “misrepresentations as to fares and charges for air transportation and services connected therewith.” Pursuant to 14 CFR 399.84, advertisements specifying airfares 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

¹ 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).

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 separately state carrier-imposed fees, such as fuel surcharges, do not comply with sections 399.80(f), 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. § 41712.² When such advertisements are caused to be published by a ticket agent, they also violate section 399.80(f) and constitute a separate and distinct violation of section 41712.³

In print advertisements, an asterisk or other symbol placed proximate to the advertised fare may refer the reader to the bottom of the advertisement where the nature and amount of the fees are shown. With respect to Internet fare listing, taxes and fees 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 the bottom of the screen, or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.⁴

Facts and Conclusions

An investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement office) found that for a period during 2009 and 2010 Nuevo Mundo published advertisements, in the *Miami Herald's* weekend travel section that stated prices for numerous airfares, but failed to include carrier imposed fuel surcharges of up to \$150. Such conduct violated sections 399.80 (f), 399.84 and 49 U.S.C. § 41712.

Mitigation

In mitigation and explanation, Nuevo Mundo states that unknown to its Miami-based representatives who were familiar with the Department's advertising requirements, non-compliant print advertisements were erroneously published at the direction of the home

² See, e.g., *British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-6-29 (June 20, 2003).

³ See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR part 257.5(d), 399.80(f) and 399.84*, Order 2009-11-8 (Nov. 9, 2009).

⁴ For example, a carrier or ticket agent could advertise a flight in the following manner: "\$260 + Taxes and Fees" with the phrase "taxes and fees" set off 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 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>.

office in Lima, Peru. Upon discovery of the non-conforming advertisements, Nuevo Mundo states that the advertisements were pulled from publication and print advertisements that comply with the Department's requirements were substituted. Nuevo Mundo further states that safeguards have been implemented to prevent future violations of the Department's requirements.

Decision

The Enforcement Office has carefully considered the information provided by Nuevo Mundo and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Nuevo Mundo have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Nuevo Mundo consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 399.84, and to the assessment of \$30,000 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 advertising requirements.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

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 Nuevo Mundo Travel Agency, Inc., violated 14 CFR 399.80(f) and 399.84 by advertising fares that failed to state the entire fare 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, Nuevo Mundo Travel Agency, Inc., engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Nuevo Mundo Travel Agency, Inc., and all other entities owned or controlled by, or under common ownership and control with Nuevo Mundo Travel Agency, Inc., their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 399.84;
5. We order Nuevo Mundo Travel Agency, Inc., to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the service date of this order, copies of all advertising material, including newspaper advertisements

and print-outs of all versions of its Internet website, that Nuevo Mundo Travel Agency, Inc., has caused to be published since the service date of this order;

6. Nuevo Mundo Travel Agency Inc. is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$15,000 shall be due and payable in six equal installments. The first payment of \$2,500 is due and payable within 30 days of the date of issuance of this consent order. The second payment of \$2,500 is due and payable within 60 days of the date of issuance of this consent order. The four subsequent equal installments of \$2,500 are due and payable within 6 months, 12 months, 18 months and 24 months of the date of issuance of this consent order, respectively. The remaining \$15,000 shall become due and payable if Nuevo Mundo Travel Agency, Inc., violates this order's cease and desist provisions during the 24 months following the service date of this order, in which case Nuevo Mundo Travel Agency, Inc., also may be subject to further enforcement action; and
7. 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 transfers 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 Nuevo Mundo Travel Agency, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure 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:

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