



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

Issued by the Department of Transportation
On the Twenty-Eighth day of June, 2010

Sceptre Tours, Inc.

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

Docket OST 2010-0005

Served June 28, 2010

CONSENT ORDER

This consent order concerns internet advertisements by Sceptre Tours, Inc. (Sceptre Tours) that violate the Department's advertising requirements specified in section 399.84 of the Department's regulations and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Sceptre Tours to cease and desist from such further violations and assesses Sceptre Tours a compromise civil penalty of \$30,000.

Applicable law

Sceptre Tours is a "ticket agent" as defined by 49 U.S.C. § 40102(a)(45)¹, which subjects it to the prohibitions on engaging in unfair and deceptive practices set forth in 49 U.S.C. § 41712, and to the advertising requirements of Part 399 of the Department's rules (14 CFR 399.84). To ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel plans, 14 CFR 399.84 requires that advertisements specifying airfares and tour package prices with an air component 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, are collected on a per-

¹ A "ticket agent" is defined as "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).

passenger basis, and their existence and amounts are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.²

With respect to internet advertisements, the full fare may be stated on the first screen that provides fare quotes, or the existence of permissibly separately-stated additional charges may be disclosed in a clearly and prominently presented hyperlink, e.g., “taxes and fees extra”, that takes consumers directly to the point below or on another page that shows the amounts of those charges. Fare advertisements that do not include an explanation or a hyperlink to an explanation regarding the additional taxes and surcharges applicable to the advertised base fare do not comply with section 399.84 and the Department case precedent. Violations of 14 CFR 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.³

In addition, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify and ensure that their agents identify this fee as the “September 11th Security Fee” in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. This office considers the failure of a carrier or ticket agent to identify the September 11th Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.⁴

Background

Sceptre Tours is a New York corporation specializing in offering comprehensive travel packages that include airfare, hotel, guided tours and other amenities to Ireland and other European destinations. Sceptre Tours promotes its air-inclusive travel packages through its website, www.sceptretours.com. A recent review of Sceptre Tours’ website by the Office of Aviation Enforcement and Proceedings (Enforcement Office) disclosed numerous instances where Sceptre Tours failed to comply with the Department’s full-fare advertising rule and case precedent. For example, prior to being contacted by the Enforcement Office, on the homepage of its website, a window flashed air-inclusive tour packages with prices. Sceptre Tours failed to identify with these advertised fares the

² See *In the Matter of Roni Herskovitz, Individually and Ultimate Fares, Inc., Enforcement Proceeding*, DOT-OST-2009-0002, Order 2009-11-08 (Nov. 9, 2009). See also Department notices entitled “*Disclosure of Airfare Variations: Web vs. Other Sources; Surcharges that may be Listed Separately in Advertisements*” (Nov. 4, 2004); “*Disclosure of Additional Fees, Charges, and Restrictions on Airfare Advertisements, Including ‘Free’ Airfares*” (Sept. 4, 2003); and “*Prohibition on Deceptive Practices in Marketing of Airfares to the Public Using the Internet*” (Jan. 18, 2001).

³ 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).

⁴ See, e.g., *A Better Fare, LLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-1-12 (Jan. 16, 2003).

existence and amounts of separate additional taxes and fees. Instead, consumers were presented with a link entitled “get going” in the window to go to the “package description” pages. There, without any indication or link proximate to the listed prices, Sceptre Tours stated in small print, among all other terms and conditions, that “[s]tated prices exclude government taxes/fees/facility charges... and the September 11th Security Fee” A similar search path was used for packages displayed on other pages of the website, such as the “Last Minute Deals Vacation Packages” page and the “Escorted Vacations” page. Sceptre Tours’ internet advertisements, as described above, failed to comply with section 399.84 and the Department’s enforcement case precedent, which also constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Sceptre Tours states that while it had been aware of the Department’s exception to the full-fare advertising regulation for government imposed taxes and fees, it was under the incorrect impression that simply noting the additional fees within the legal terms and conditions was sufficient. Sceptre Tours further states that it was never its intention to deliberately disregard the Department’s requirements or to mislead customers in any way. Furthermore, upon learning that it was out of compliance, Sceptre Tour states that it took immediate steps to modify its web site and rectify the situation.

Decision

The Enforcement Office has carefully considered all of the information available to it, including that provided by Sceptre Tours, Inc., but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Sceptre Tours, Inc., have reached a settlement in this matter. While neither admitting nor denying the above allegations, Sceptre Tours, Inc., accepts the findings and conclusions stated herein in order to avoid litigation. Under this order, Sceptre Tours, Inc., is assessed \$30,000 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 \$30,000 is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by Sceptre Tours, Inc., and other sellers of 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 the order as being in the public interest;
2. We find that Sceptre Tours, Inc., violated 14 CFR 399.84, as described above, by causing to be published advertisements on the Internet that failed to state the entire price to be paid for the advertised air transportation;

3. We find that by engaging in the conduct described in paragraph 2, above, Sceptre Tours, Inc., engaged in unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We find that Sceptre Tours, Inc., failed to disclose the existence and amount of the September 11th Security Fee applicable to the tour packages advertised on its website in violation of 49 U.S.C. § 41712;
5. We order Sceptre Tours, Inc., and all other entities owned and controlled by, or under common ownership with Sceptre Tours, Inc., and their successors and assignees, to cease and desist from further violations of and 14 CFR 399.84 and 49 U.S.C. § 41712;
6. We assess Sceptre Tours, Inc., a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$15,000 will become due and payable within 20 days of the issuance of this order. The remaining \$15,000 will become due and payable if Sceptre Tours, Inc., violates this order's cease and desist provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately. Failure to pay the penalty as prescribed in ordering paragraph 7, below, shall subject Sceptre Tours, Inc., to the assessment of interest, penalties, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order; and
7. 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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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