



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

**Issued by the Department of Transportation
On the 1st Day of April, 2009**

Condor Flugdienst GmbH

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

Docket OST 2009-0001

Served April 1, 2009

CONSENT ORDER

This consent order concerns advertisements by Condor Flugdienst GmbH ("Condor") that violate the Department's advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399), and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Condor Flugdienst GmbH to cease and desist from future violations and assesses the company compromise civil penalties of \$22,000.

Condor, as a foreign air carrier, 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, as a matter of enforcement policy, the Department has permitted air carriers and 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, so long as their amounts appear or are indicated clearly in the advertisement 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 seriously confused about the total amount that must be paid. Carrier- or agent-imposed surcharges, e.g., fuel, insurance, and service charges, or other such costs, must also 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 proximately to the stated price, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed. (See, e.g., JetBlue Airways, Inc., Order 2004-2-4, Grand Circle Travel Corp, Order 2006-7-23, Ritz Tours, Inc., Order 2008-2-22, JTB Corporation, Order 2008-12-24, 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>.)

During a time period ending in mid-2008, Condor promoted flights to and from the United States through print advertisements, advertisements that were published on its web site, and direct e-mail advertising campaigns. The listed prices for the flights and air tour packages failed to include airline fuel surcharges and a service charge imposed by Condor itself.²

Not including fuel surcharges and service charges in the advertised price when a fare is first listed violates 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, such practices constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

In mitigation and explanation, Condor states that compliance with the Department's full fare advertising rule is one of its highest priorities. When Condor learned that the Enforcement Office was concerned about its advertising, the company took immediate action to address those concerns. In

¹ See, e.g., Order 97-11-14.

² For example, Condor published a series of advertisements: "We Fly you to the heart of Europe". The ads read: "Get to any European City in a heartbeat from USD 129*." The asterisk referred to a statement in the fine print that "One Way fare plus USD 29 up to USD 87 fuel surcharge and USD 13 up to USD 28 Condor service charge when booking at www.condor.com."

this regard, Condor recounts that it rapidly modified its web site to include all the airline-imposed fuel and service surcharges in its airfare pricing.

According to the carrier, this modification involved a significant amount of manual reprogramming. The company states that any noncompliance on Condor's part was completely inadvertent, and that it did not receive any consumer complaints regarding the advertisements at issue here.

The company also notes that although it failed to include the fuel surcharge and service charges in the advertised fare, it did disclose the general principle that such charges were applicable; therefore Condor states that it is confident that consumers have always been advised both of the additional charges and of the total price during the booking process, before purchasing a Condor flight or air tour. Condor further notes that it has an extremely limited presence in the United States; it is currently operating only three flights per week to a single United States destination year round, and that it operates additional flights on a limited, seasonal basis to another U.S. destination. Condor further notes that the vast majority of its passengers originate in Germany.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Condor Flugdienst GmbH, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Condor Flugdienst GmbH have reached a settlement in this matter. While neither admitting nor denying the above allegations, Condor Flugdienst GmbH accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Condor Flugdienst GmbH is assessed \$22,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$11,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$11,000 shall be due and payable if Condor Flugdienst GmbH violates this order's cease and desist provision within one year of the date of issuance of this order, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$22,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action. The Enforcement Office believes that the assessment of a civil penalty of \$22,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to similar unlawful conduct in the future by Condor Flugdienst GmbH 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 this order as being in the public interest;
2. We find that Condor Flugdienst GmbH 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 carrier for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, Condor Flugdienst GmbH engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Condor Flugdienst GmbH, and all other entities owned and controlled by, or under common ownership and control with Condor Flugdienst GmbH, and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Condor Flugdienst GmbH is assessed \$22,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$11,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$11,000 shall be due and payable if Condor Flugdienst GmbH violates this order's cease and desist provision within one year of the date of issuance of this order, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$22,000 penalty shall become due and payable immediately, and the company may be subject to further enforcement action;
6. Failure to pay the compromise assessment as ordered will subject Condor Flugdienst GmbH 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;
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; and

8. We order Condor Flugdienst GmbH to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of flights and air tours it causes to be published in printed format or circulates as current during the last 30 days of the one-year period following the issuance of this order; and (b) printouts of screen displays advertising air tour prices on its internet site for the 15th day of each month during the one-year period following issuance of this order. This material shall be submitted within 15 days of the conclusion of the referenced one-year period.

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

(SEAL)

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