



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

**Issued by the Department of Transportation
On the twenty-ninth day of August 2007**

Viking River Cruises, Inc.

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

Docket OST 2007-26781

Served August 29, 2007

CONSENT ORDER

This consent order concerns advertisements by Viking River Cruises, (“Viking River Cruises”) that violate the Department’s advertising requirements specified in section 399.84 of the Department’s regulations (14 CFR 399.84), and constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Viking River Cruises to cease and desist from future violations and assesses the company compromise civil penalties of \$50,000.

Viking River Cruises, as a seller of air travel, 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, 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 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, 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>.)

Viking River Cruises has specialized since 2000 in offering comprehensive travel packages that include airfare, hotel, guided tours and other amenities. During 2005 and 2006, Viking River Cruises promoted air travel packages through printed brochures, mailers and by means of advertisements that were published over the Internet -- on the web site of Viking River Cruises -- and through direct e-mail advertising campaigns. The airfares and air tours promoted in Viking River Cruises' brochures, e-mails and mailers and on its web site did not comply with Department requirements. More specifically, the listed prices for the complete air and cruise packages did not include airline fuel surcharges and they lacked an appropriate notice or hyperlink prominent and proximate to the price that disclosed to the viewer that taxes and fees were not included. Rather, the Viking River Cruises advertisements included at the bottom of the page a link under "notes & disclaimers" which took the reader to another page. On that "disclaimer" page, the text stated: "Airfare purchased from Viking River Cruises does not include air taxes fees or fuel surcharges, which are subject to change depending upon airline policies. At the time of printing, air taxes/fees/fuel surcharges were \$320."

Not including the fuel surcharge(s) in the advertised price when it is first listed violates the Department's regulations and enforcement case precedent. Likewise, the failure to provide appropriate notice of and a link to a description of the taxes and fees assessed and their amount or a range also violates the Department's full-fare advertising rule and the related case precedent. In

¹ See, e.g., Order 97-11-14.

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.

Moreover, once a firm quotes through its advertising a specific price for a flight, tour or tour component, the firm must charge that price to the consumer. When a firm advertises a specific price for a flight, tour or tour component, it must have available a reasonable inventory at the advertised price for a reasonable time period. To preclude there being a deceptive practice issue for brochures, a firm can state in its brochures that the prices it is advertising are good as of or until a date certain, and advise the consumer that availability of the advertised fares may be limited and current fares may be higher with notice as to where current prices can be obtained. For example, the following language would suffice if conspicuous to a reader: "Prices in this brochure were effective on [date] and their availability is limited. At the time you purchase your tour, prices may be higher. For current prices, please see our website." Fares held out on the Internet or in newspapers, or orally, however, must be current and available.

In mitigation and explanation, Viking River Cruises states that it has never received a complaint concerning its advertising of air-inclusive tour packages, much less the separation of fuel surcharges from base fares. However, Viking River Cruises declares that it takes its obligations under the Department's full fare advertising rule very seriously, and that it has never previously received notice of any error in its approach. The firm asserts that it takes great pride in its unique travel products, its outstanding reputation among travelers and travel agents, and the strong repeat business it receives from loyal travelers.

Viking River Cruises further states that consumers have always been advised of additional charges in its advertising, and that it believes that its disclosures through footnote or hyperlink were in conformity with the Department's expectations. Moreover, the firm states that consumers could not book an air-inclusive package online; rather, consumers had to call Viking River Cruises itself or a travel agent, who in turn had to call Viking River Cruises' reservation center to book a package tour. Viking River Cruises further explains that the consumer was always informed of the total price to be paid during that process, and again when the consumer received his or her invoice. As a result, according to Viking River Cruises, at no time were consumers misled as to the final price to be paid for air-inclusive packages. Viking River Cruises maintains that no consumers were harmed as a result of its previous advertising practices.

Moreover, when Viking River Cruises learned that the Enforcement Office was concerned about its advertising, the firm declares that it moved quickly to address all of the Department's concerns. Specifically, Viking River Cruises took the following affirmative and substantial steps: first, it revised the Viking River Cruises web site (www.VikingRiverCruises.com) as well as its printed materials to include all airline fuel surcharges and applicable taxes and fees in its base tour prices, a measure that provides consumers the highest possible level of price transparency and meets all DOT requirements on full fare advertising; second, it instructed and retrained reservation agents about the Department's rule on full fare advertising; third, it distributed with its subsequent mailings to its customers a new letter explaining the alterations it had made in its fare advertising; and fourth, it subsequently disposed of its considerable stock of noncompliant brochures. Viking River Cruises maintains that the total cost of these steps was substantial. Finally, Viking River Cruises encourages the Department to issue further guidance to the Tour Operator industry on the full fare advertising rule.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Viking River Cruises, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Viking River Cruises have reached a settlement in this matter. While neither admitting nor denying the above allegations, Viking River Cruises accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Viking River Cruises is assessed \$50,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this penalty amount, \$25,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for one year, then forgiven unless Viking River Cruises, Inc. violates this order's cease and desist or payment provisions within that one-year period, in which case the entire sum will become due and payable. The Enforcement Office believes that the assessment of a civil penalty of \$50,000 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 Viking River Cruises 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 Viking River Cruises, Inc., 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 firm for certain air transportation;
3. We find that by engaging in the conduct described in paragraph 2, above, Viking River Cruises, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Viking River Cruises, Inc., and all other entities owned and controlled by, or under common ownership and control with Viking River Cruises, Inc., 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. Viking River Cruises, Inc., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this penalty amount, \$25,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$25,000 shall be suspended for one year, then forgiven unless Viking River Cruises, Inc. violates this order's cease and desist or payment provisions within that one-year period, in which case the entire sum will become due and payable. Failure to pay the compromise assessment as ordered will subject Viking River Cruises, Inc., 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
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.

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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