



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

Issued by the Department of Transportation
on the 26th day of May, 2005

Grand Casinos, Inc.

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

Docket OST 2005-20077

Served May 26, 2005

CONSENT ORDER

This consent order concerns newspaper advertisements by Grand Casinos, Inc., that violate 49 U.S.C. § 41712 and 14 CFR Part 399. It directs Grand Casinos to cease and desist from such further unlawful conduct and assesses a compromise civil penalty of \$60,000.

Grand Casinos is a ticket agent as defined by 49 U.S.C. § 40102(a)(40)¹, which subjects it to the prohibitions on unfair and deceptive practices of 49 U.S.C. § 41712 and, in particular, to sections 399.80 and 399.84 of the Department's rules (14 CFR 399.80 and 399.84). In 14 CFR 399.80(f), the Department has stated that, as a matter of policy, it 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."

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-passenger basis,

¹ 49 U.S.C. § 40102(a)(40) defines a ticket agent 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."

and their existence and amounts are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. Government-imposed taxes and fees that are assessed on an *ad valorem* basis, i.e. as a percentage of the fare price, as well as any carrier-imposed charges, must be included in the base advertised fare. Fare advertisements that include only general statements regarding the existence of additional taxes and fees do not allow consumers to calculate the full fare to be paid and, therefore, do not comply with section 399.84 or the Department's enforcement case precedent. When such advertisements are caused to be published by ticket agents, they also violate section 399.80(f) and constitute an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.²

Effective December 31, 2001, the Transportation Security Administration (TSA) promulgated 49 CFR Part 1510, which imposed 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 carriers are required to identify the security service fee as the "September 11th Security Fee" in advertisements and solicitations for air transportation in which the security service fee is not included in the advertised base fare. This office considers a ticket agent's failure to identify the September 11th Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.³

Between June 2003 and March 31, 2005, Grand Casinos ran a series of print advertisements in several major newspapers touting various tour packages for trips to Grand Casinos' resorts at daily rates ranging from \$51 to \$149, including round-trip airfare. These advertisements contained only general statements that the rates did not include "PFCs, airport taxes and fees." As published, the Grand Casinos' advertisements therefore violated 14 CFR 399.80(f) and 399.84 and 49 U.S.C. § 41712. In addition to failing to identify properly the amount of the government-imposed taxes and fees, the advertisements failed to identify explicitly the September 11th Security Fee, which, as stated above, constitutes a separate and distinct violation of section 41712.

In mitigation, Grand Casinos states that it had no intention of providing misleading information. Grand Casinos further states that it is highly regulated in all aspects of its business and takes its compliance duties seriously. According to Grand Casinos, upon being alerted of its non-compliance with the Department's rules, it took immediate steps to bring its advertising into compliance and has implemented new procedures for reviewing its advertising to ensure that the company remains in compliance in the future. Grand Casinos also states that all fees were fully disclosed to the consumer before any purchase was concluded. Finally, Grand Casinos states that it has cooperated fully with the Department in its investigation of the company's advertising practices.

² The Office of Aviation Enforcement and Proceedings has pursued enforcement action on these grounds against numerous air carriers and travel agents. See, e.g., *Hobbit Travel, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.80 and 14 CFR 399.84*, Order 2004-8-2 (Aug. 6, 2004).

³ 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).

The Office of Aviation Enforcement and Proceedings (Enforcement Office) views seriously the obligation of all ticket agents to comply with Departmental regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. Accordingly, the Enforcement Office has carefully considered all of the available information in this case, but continues to believe that enforcement action is warranted. Grand Casinos, Inc., in order to avoid litigation and without admitting or denying the alleged violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and of 14 CFR 399.80(f) and 399.84, and to the assessment of \$60,000 in compromise of potential civil penalties. Of this total penalty amount, \$30,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$30,000 shall be suspended for one year after the issuance of this order and then forgiven, unless Grand Casinos, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Grand Casinos, Inc., may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with the Department's advertising requirements by Grand Casinos, Inc., as well as by other ticket agents and air carriers.

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 Grand Casinos, Inc., has violated 14 CFR 399.80(f) and 399.84 by causing to be published airfare advertisements that failed to state the entire price to be paid for the advertised air transportation, as described above;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, and by not identifying in its advertisements the September 11th Security Fee by name, as required by 49 CFR 1510.7, Grand Casinos, Inc., also engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Grand Casinos, Inc., and all other entities owned and controlled by, or under common ownership and control with Grand Casinos, Inc., and their successors and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.80(f) and 399.84;

5. We assess Grand Casinos, Inc., a compromise civil penalty of \$60,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$30,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$30,000 shall be suspended for one year after the issuance of this order and then forgiven unless Grand Casinos, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Grand Casinos, Inc., may be subject to additional enforcement action. Failure to pay the penalty as ordered shall also subject Grand Casinos, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Grand Casinos, Inc., shall make the payment set forth in ordering paragraph 5, above, 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 motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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