



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

Issued by the Department of Transportation  
on the twenty-fourth day of August 2007

Trafalgar Tours West, Inc., d/b/a  
Trafalgar Tours

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

Docket OST 2007-26781

Served August 24, 2007

**CONSENT ORDER**

This consent order concerns advertisements by Trafalgar Tours West, Inc., d/b/a Trafalgar Tours ("Trafalgar Tours") 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 Trafalgar Tours to cease and desist from future violations and assesses the company compromise civil penalties of \$85,000.

Trafalgar Tours, 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.<sup>1</sup> 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 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>.)

Trafalgar companies have specialized since at least 1947 in offering comprehensive travel packages that include airfare, hotel, river cruises, guided tours and other amenities. Trafalgar Tours has promoted air travel packages through printed brochures, mailers and by means of advertisements it published on its web site and through direct e-mail advertising campaigns. The airfares and air tours promoted in Trafalgar Tours’ 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 the advertisements lacked an appropriate notice or hyperlink prominent and proximate to the price that disclosed to the viewer that taxes and fees that are permitted to be listed separately from the advertised price were not included.<sup>2</sup>

Not including fuel surcharges 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 in amounts, also violates the Department’s full-fare advertising rule and the related case precedent. In addition to violating the requirements of section

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<sup>1</sup> See, e.g., Order 97-11-14.

<sup>2</sup> Moreover, Trafalgar Tours’ price guarantee, which stated in essence that no price increase would be made once a deposit for the tour had been paid, specifically excluded fuel surcharges. Under this provision, Trafalgar Tours could have required that a consumer, who had already paid the deposit for an air tour (or even the full advertised price for the tour), pay additional amounts in the form of a “fuel surcharge.”

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 in the case of 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, Trafalgar Tours states that it takes its obligations under the Department's full fare advertising rule very seriously. The firm states that it had no intention of violating any Department rule or regulation. The company claims further that as soon as it learned that the rule is applicable to operators of air tours, which it learned through recent enforcement actions against other tour companies, it began immediately to ascertain what corrective action would be required to bring its web site and all its other advertising practices into conformity with Department requirements in consultation with newly-retained regulatory counsel. Trafalgar Tours states that it both consulted counsel and initiated the necessary changes well before the firm was contacted by the Enforcement Office. Moreover, Trafalgar Tours indicates that it speedily revised its website to include airline fuel surcharges in the base prices of air tours, and to disclose properly those taxes and other fees not required by the Department to be included in the advertised price.

In addition, Trafalgar Tours asserts that even during the period before the firm made any of these revisions, travel agents, its own agents, and its web site advised consumers of additional charges and of the total price during the booking process so that consumers learned of the full price before they made the decision to purchase a Trafalgar Tours tour. Trafalgar Tours also states that under its future program, its call center representatives will explain any pricing discrepancies or changes to consumers who may have reviewed past advertisements. The firm also indicates that it will ensure that, in the future, all of its print advertising will comply with Department requirements.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Trafalgar Tours, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Trafalgar Tours have reached a settlement in this matter. While neither admitting nor denying the above allegations, Trafalgar Tours accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Trafalgar Tours is assessed \$85,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of this penalty amount, \$42,500 shall be due and payable within 15 days of the issuance of this order. The remaining \$42,500 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless Trafalgar Tours violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. The Enforcement Office believes that the assessment of a civil penalty of \$85,000 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 Trafalgar Tours 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 Trafalgar Tours West, Inc., d/b/a Trafalgar Tours 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, Trafalgar Tours West, Inc., d/b/a Trafalgar Tours engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. Trafalgar Tours West, Inc., d/b/a Trafalgar Tours, and all other entities owned and controlled by, or under common ownership and control with Trafalgar Tours West, Inc., d/b/a Trafalgar Tours, as well as all other entities controlling Trafalgar Tours West, Inc., d/b/a Trafalgar

Tours, 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. Trafalgar Tours West, Inc., d/b/a Trafalgar Tours is assessed \$85,000 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, \$42,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$42,500 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless Trafalgar Tours West, Inc., d/b/a Trafalgar Tours violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. Failure to pay the compromise assessment as ordered will subject Trafalgar Tours West, Inc., d/b/a Trafalgar Tours 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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