



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

**Issued by the Department of Transportation
On the 3rd day of September, 2009**

Costa Cruise Lines N.V.

**Violations of 49 U.S.C. § 41712 and
14 CFR 399.84**

Docket DOT-OST 2009-0001

Served September 3, 2009

CONSENT ORDER

This consent order concerns advertisements by Costa Cruise Lines N.V.¹, (“Costa Cruise Lines”) 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 Costa Cruise Lines to cease and desist from future violations and assesses the company compromise civil penalties of \$ 35,000.

Costa Cruise Lines, as a seller of cruise and air tour packages, 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

¹ Costa Cruise Lines N.V. is a Netherlands Antilles corporation qualified as a foreign corporation authorized to transact business in Florida. It is the sales and marketing agent for Costa Crociere S.p.A., an Italian corporation based in Genoa, Italy, which is the owner and operator of cruise vessels.

advertisement so that the consumer can determine the full price to be paid.² 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., JTB Corporation, Order 2008-12-24, Trafalgar Tours West, Order 2007-8-24, Grand Circle Travel Corp, Order 2006-7-23, JetBlue Airways, Inc., Order 2004-2-4, 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>).

Costa Cruise Lines specializes in offering ocean cruises, along with cruise travel packages, which include airfares, guided tours, and related amenities, particularly to Europe, Russia and the Baltic Sea, South America, and countries in the Eastern Mediterranean and the Far East. Costa Cruise Lines has promoted its airfares and air travel packages in the United States through printed advertisements, brochures and other mailers, and by means of e-mail solicitations and advertisements that are published on its web site, www.Costacruise.com.

An investigation by the Department’s Office of Aviation Enforcement and Proceeding (“Enforcement Office”) disclosed that the air fares and cruise and air tours promoted by Costa Cruise Lines in its flyers and other print advertisements and on its web site did not comply with Department requirements. More specifically, the listed prices for the complete air and cruise packages failed to include cruise-related fuel surcharges, which must be included in the advertised price, and failed to include an appropriate notice of the amount or nature of government taxes and fees that are not included in the overall air plus cruise package price.

For example, in a search starting with an e-mail solicitation, “2-Day President’s Sales—Summer Mediterranean Cruises from \$649,” the Enforcement Office researched an advertisement entitled “Italy/Greece/Croatia Costa Serena -- 7 Nights President’s Sale from \$649*.” The sub-head stated: “Add round-trip airfare from only \$1250**.” The text immediately below described the cruise and the round-trip airfare as “by far the lowest rate for a European vacation!” In the fine print below the body, the double asterisk is detailed:

Round Trip Air based on departures from New York (JFK) for all featured sailings. Airfare from over 150 other gateways are available at additional cost, pricing based on airline availability and may be subject to change.

² See, e.g., Order 97-11-14.

Price includes round trip air. Airport to pier, pier to airport transfers and overnight hotel additional. Does not include US and foreign tax and other government imposed fees. . . .

There was no appropriate notice on the screen or page where the cost of the overall trip was first revealed of the amount or nature of government taxes and fees that are not included in the overall cruise plus air package price. When Enforcement Office staff examined the brochure section on the Costa Cruises web site, and clicked first on the subtitle “Air connections – More than **75** Gateway Cities To Easily Get You There and Back,” then under the subhead “Are taxes included in the Price?,” they were informed that:

[T]he prices for Air Add-ons do not include government taxes and fees imposed or sanctioned by the U.S. or other governments. These charges are in addition to the airfare quoted and may include without limitation passenger and airport facility charges, airport security fees, security surcharges, fuel surcharges, international arrival or departure taxes, customs user fees, immigration fees, agricultural inspection fees and any new taxes or charges which may be enacted after this brochure was published.

Costa Cruises promised that it would inform the passenger of any applicable charges and taxes “at the time of booking.”³

Prices advertised on Costa Cruise Lines’ web site, however, did not meet Department requirements. More specifically, the listed prices did not include all fuel surcharges, nor was the existence, nature or amount of additional taxes and fees properly stated in these solicitations. Failure to include fuel surcharges imposed by carriers, or other surcharges collected by Costa Cruise Lines, in the advertised price of an air ticket or air tour package when it 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.

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 an air tour seller 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 flyers or brochures, a firm can state in its flyers and 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 the current prices can be obtained. Fares held out on the Internet or in newspapers, or orally, however, must be current and available.

³ Costa Cruises added the caveat: “The actual charges reflected on your airline ticket might be different than the amount charged; refunds will not be made.”

In mitigation and explanation, Costa Cruise Lines stresses that it is committed to following Department regulations and ensuring that its products are marketed fairly to its customers. Costa Cruise Lines is primarily engaged in the business of selling ocean cruises, and it sells air travel only as an addition to a cruise package to about 3% of its passengers. Nevertheless, it has gone to great effort to ensure that all costs are disclosed to its passengers in a transparent way before any sale is finalized.

Costa Cruise Lines stresses that the prices for airfare quoted in its advertisements and website have always included all air-related taxes, fees and fuel surcharges. Even though for a short period of time some advertisements contained language indicating that air fuel surcharges and other fees on air travel were not included in the stated prices, the statements did not reflect Costa Cruise Lines' actual practice of including the fees. Costa Cruise Lines asserts that, while it does not admit wrongdoing, it has been fully cooperative with the Department and immediately reviewed and revised its advertisements in response to the Department's concerns. Costa Cruise Lines states that its customers have always been of paramount importance, and that customers were not harmed by the advertisements because Costa did not charge or collect any additional amounts for air travel above the advertised price.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Costa Cruise Lines, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Costa Cruise Lines have reached a settlement in this matter. While neither admitting nor denying the above allegations, Costa Cruise Lines accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, Costa Cruise Lines is assessed \$35,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$17,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$17,500 shall become due and payable if, within one year following the date of issuance of this order, Costa Cruise Lines violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Costa Cruise Lines may be subject to additional enforcement action for the failure to comply with this order. The Enforcement Office believes that the assessment of a civil penalty of \$35,000 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 Costa Cruise Lines 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 Costa Cruise Lines N.V. 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, Costa Cruise Lines N.V. engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. We order Costa Cruise Lines N.V. and all other entities owned and controlled by, or under common ownership and control with Costa Cruise Lines N.V., and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;

5. Costa Cruise Lines N.V. is assessed \$35,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of this order. Of this total penalty amount, \$17,500 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$17,500 shall become due and payable if, within one year following the date of issuance of this order, Costa Cruise Lines N.V. violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Costa Cruise Lines N.V. may be subject to additional enforcement action for failure to comply with this order;

6. Failure to pay the compromise assessment as ordered shall subject Costa Cruise Lines N.V. 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 order; and

8. We order Costa Cruise Lines N.V. to submit to the Office of Aviation Enforcement and Proceedings copies of (a) all advertisements of air tours or air tour components 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)

An electronic version of this document is available
On the World Wide Web at
<http://www.regulations.gov>