



**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, 2010**

**China Focus, Inc., d/b/a China Focus  
Travel**

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

**Docket OST-2010-0005**

**Served September 3, 2010**

**CONSENT ORDER**

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

China Focus Travel, as a ticket agent selling air tour packages, including land and river cruise package tours, 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 ticket 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 confused about the total amount that must be paid. On the other hand, 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 directly to the bottom of the screen, or to a place on a separate screen, where the nature and amount of such fees are displayed.<sup>2</sup>

In addition the Transportation Security Administration (TSA) has promulgated a regulation, 49 CFR Part 1510, that imposes 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 air carriers are required to identify the security service fee as the “September 11th Security Fee” in advertisements and solicitations for air transportation that separately state the fee. Failure by a ticket agent to identify the September 11th Security Fee as required by section 1510.7 is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

In offering air travel packages from the United States to China, which include air fares, guided tours, cruises, and related amenities, China Focus Travel has promoted its air fares and air travel packages in the United States by means of e-mail solicitations and advertisements that are published in print and on China Focus Travel’s web site, [www.chinafocustravel.com](http://www.chinafocustravel.com), and other web sites.

An investigation by the Department’s Office of Aviation Enforcement and Proceedings (“Enforcement Office”) disclosed that the air tour packages promoted by China Focus Travel on its web site and that of others did not comply with Department requirements. Specifically, the listed prices failed to include air-related fuel surcharges, which must be included in the advertised price, and failed to include appropriate notice of the amount of government taxes and fees that are not included in the overall air plus cruise package price.

For example, the Enforcement Office initiated a search of an advertisement, “Splendid China 2010 Promotion 12-Days, Early Bird discount up to \$200 per person! Starting Price: \$988.” Upon clicking on the sub-head link, “View Tour Dates and Prices for

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<sup>1</sup> See *eg.*, Costa Cruise Lines N.V., Order 2009-9-3.

<sup>2</sup> See *eg.*, 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>.

More Detail,” the staff member was taken to a statement at the bottom of that page that described the “Costs due with final Payment,” as “SFO: International and Domestic China Taxes (U.S. & China): \$314/Person\*\*.”

Upon further inquiry, Enforcement Office staff ascertained that, in fact, the applicable government-imposed taxes and fees amounted to no more than \$110, and were not, as stated, \$314. Instead, China Focus had included the airline-imposed fuel surcharge of about \$200 in the amount it designated “International and Domestic China Taxes.” In addition, the September 11<sup>th</sup> Security Fee was part of the separately-stated taxes and fees but was not identified as required. Enforcement Office staff verified that the promotions for numerous other China Focus air tour packages contained virtually identical false statements and violations of the Department’s full-fare advertising requirements.

By failing to include fuel surcharges imposed by carriers in the advertised price of an air ticket or air tour package when it first listed the price, China Focus Travel violated 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. China Focus Travel engaged in a separate violation of 49 U.S.C. § 41712 by failing to identify the September 11th Security Fee as required by section 1510.7.

Furthermore, under the subheading “Tour Dates and Prices” for “Splendid China 2010 - - 12 Days,” China Focus Travel declared:

\*\* The international & domestic taxes listed above cover the U.S. departure taxes plus the China domestic & international departure taxes. The taxes are subject to change according to the airlines and the government (U.S. & China). If there is an increase after you put down a deposit or made your final payment, you are still subject to pay the difference.

This statement is false and deceptive since airlines do not impose taxes. As such, it constitutes a separate violation of 49 U.S.C. § 41712.

With regard to fuel surcharges, we recognize the difficulties faced by some companies who may themselves be subject to “fuel surcharges” by airlines in

their contracts with carriers in order to secure seats in advance. However, 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.

In mitigation and explanation, China Focus Travel states that, upon receiving notice of alleged violations of the full fare advertising law, it immediately initiated full cooperation with the Department. When the firm recognized that there were problems with the presentation of information on its web site, China Focus recounts that it voluntarily made changes to the advertisements of all of its tour packages, in order to avoid even the possibility of a violation of the Department's rules and regulations, and to prevent any potential consumer confusion. Furthermore, China Focus explains that it made significant and far-reaching changes to its web site to ensure that it was clear to consumers that fuel surcharges were included in the quoted prices.

Finally, China Focus emphasizes that there has been no evidence of any consumer complaints or reports regarding China Focus' prior manner of characterizing fuel surcharges as part of taxes and fees, or about any lack of clarity on its web site. In its view, China Focus cooperated with the Department throughout this investigation and acted as quickly as possible to prevent any consumer confusion.

The Enforcement Office has carefully considered all of the information available to it, including that provided by China Focus Travel, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and China Focus Travel have reached a settlement in this matter. While neither admitting nor denying the above allegations, China Focus Travel accepts the findings and conclusions stated herein in order to avoid potential litigation. Under this order, China Focus Travel is assessed \$50,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$25,000 shall be due and payable under the schedule set forth in the ordering paragraphs below. The remaining civil penalty amount of \$25,000 shall become due and payable if, within one year of the date of issuance of this order, China Focus Travel violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, China Focus Travel may become subject to additional enforcement action for violation of the order. 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 China Focus Travel 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 China Focus, Inc., d/b/a China Focus Travel 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, China Focus, Inc., d/b/a China Focus Travel engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. We find that by failing to identify the September 11th Security Fee as required by section 1510.7, China Focus, Inc., d/b/a China Focus Travel engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;

5. We order China Focus, Inc., d/b/a China Focus Travel and all other entities owned and controlled by, or under common ownership and control with China Focus, Inc., d/b/a China Focus Travel, and their successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;

6. China Focus, Inc., d/b/a China Focus Travel is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3 and 4 of this order. Of the total penalty amount, \$25,000 shall be due and payable as follows: \$10,000 shall be due and payable within 30 days of the date of issuance of this order. Three payments of \$5,000 each shall be due and payable on December 1, 2010, April 1, 2011, and July 1, 2011, respectively. Of the remaining portion of the civil penalty amount, \$25,000 shall become due and payable if, within one year of the date of issuance of this order, China Focus, Inc., d/b/a China Focus Travel violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case, China Focus, Inc., d/b/a China Focus Travel may become subject to additional enforcement action for violating 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;

8. Failure to pay the compromise assessment as ordered shall subject China Focus, Inc., d/b/a China Focus Travel 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

9. We order China Focus, Inc., d/b/a China Focus Travel 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 15<sup>th</sup> 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

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