



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

**Issued by the Department of Transportation  
On the Twenty-Second day of October, 2010**

**Educational Opportunities Tours, Inc.**

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

**Docket OST 2010-0005**

**Served October 22, 2010**

**CONSENT ORDER**

This consent order concerns advertisements by Educational Opportunities Tours, Inc., (EOT) that violated 14 CFR 399.84, the Department’s rule on requiring disclosure of the full fare in advertising, 14 CFR 399.80(f), prohibiting misrepresentations by ticket agents, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices by air carriers and ticket agents. This order assesses a compromise civil penalty of \$60,000 and directs EOT to cease and desist from future similar violations.

**Applicable Law**

EOT is a travel agent that sells air transportation. Engaging in such conduct makes EOT a “ticket agent” pursuant to 49 U.S.C. § 40102<sup>1</sup> and therefore subjects it to the Department’s jurisdiction, including the prohibition on unfair and deceptive practices and unfair methods of competition in 49 U.S.C. § 41712 and the fare advertising requirements of 14 CFR Part 399.

Pursuant to 14 CFR 399.80(f), as a matter of policy, the Department 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.” Pursuant to 14 CFR 399.84, advertisements specifying airfares must state the full price to be paid by the consumer.

<sup>1</sup> A ticket agent is “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.” 49 U.S.C. § 40102(a)(45).

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, i.e., not assessed as a percentage of the fare price, are collected on a per-passenger basis, and their existence and amounts are clearly indicated at the first point in the advertisement where a fare is presented so that consumers can immediately determine the full fare to be paid. Thus, for example, fare advertisements that 1) fail entirely to identify the existence and amount of separate additional taxes and fees, 2) include only general statements regarding the existence of such taxes and fees, or 3) separately state carrier-imposed fees, such as fuel surcharges, do not comply with sections 399.80(f), 399.84, or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.<sup>2</sup> When such advertisements are caused to be published by a ticket agent, they also violate section 399.80(f) and constitute a separate and distinct violation of section 41712.<sup>3</sup>

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare may be disclosed through a prominent link placed adjacent to the stated fares<sup>4</sup> that notes that taxes and fees are extra and directly takes the viewer to a pop-up, or to a place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.<sup>5</sup>

In addition, as detailed in 49 CFR Part 1510, there are specific disclosure requirements pertaining to the September 11th Security Fee of \$2.50 per enplanement on passengers of domestic and foreign carriers in air transportation originating at airports in the United States. Pursuant to section 1510.7, air carriers and foreign air carriers are specifically required to identify this fee as the "September 11th Security Fee" in all advertisements and solicitations for air transportation where it is not included in the advertised base fare. This office considers the failure of a carrier or ticket agent to identify the

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<sup>2</sup> See, e.g., *British Airways, PLC, Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2003-6-29 (June 20, 2003).

<sup>3</sup> See, e.g., *Roni Herskovitz, Individually, and Ultimate Fares, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR part 257.5(d), 399.80(f) and 399.84*, Order 2009-11-8 (Nov. 9, 2009).

<sup>4</sup> For example, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that takes the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees are prominently and immediately displayed.

<sup>5</sup> See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

September 11th Security Fee as required by the rule to constitute a separate and distinct unfair and deceptive practice in violation of 49 U.S.C. § 41712.<sup>6</sup>

Furthermore, under 49 U.S.C. § 41712, the Department can determine whether or not other actions by ticket agents constitute an unfair or deceptive practice or an unfair method of competition in the sale of air transportation. In this regard, the Department has long held that the disclosure of essential terms of transportation must be stated prominently and proximately to advertised airfares, including the price of tour packages that include airfares. Failure to disclose essential terms in this manner constitutes a violation of 49 U.S.C. § 41712.<sup>7</sup>

### **Background**

An investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) disclosed that EOT's website (<http://www.eo.travelwithus.com/>) and downloadable brochures advertised numerous international tour packages with prices that included roundtrip airfare, but that failed to detail the nature and amount of additional taxes and fees that may properly be excluded from the advertised price. For example, on its website EOT listed prices for particular air tour packages, but did not disclose the existence and amount of additional taxes and fees. Furthermore, on EOT's downloadable brochures associated with its tour packages, EOT did include an asterisk next to the tour package price that led consumers to a fine print disclaimer at the bottom of the page, which stated "plus Tax, Tips, Etc." However, EOT failed to state the nature and amount of those taxes and fees. Additionally, in the "Fine Print" section in many of its downloadable brochures, EOT noted that the price did not "include fuel surcharges which may be imposed by airlines" and noted that "EOT reserves the right to add a surcharge if the dollar declines by more than 5% against the Euro based on foreign exchange rates." Accordingly, EOT's advertisements violated the Department's full-fare advertising rule, 14 CFR 399.84, and the prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712.<sup>8</sup> EOT 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.

Finally, many of EOT's air tours advertised in its downloadable brochures were contingent on certain conditions being met, such as "a minimum of 45 passengers

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<sup>6</sup> 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).

<sup>7</sup> See, e.g., *Martinair Holland, N.V., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 1999-6-14; *America West Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399*, Order 2003-7-39; *Continental Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-8-3 (Aug. 10, 2009).

<sup>8</sup> See, e.g., *Gate 1, Ltd., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2009-7-5 (Jul. 7, 2009); *Ritz Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR 399.84*, Order 2008-2-22 (Feb. 15, 2008); *Trafalgar Tours West, Inc., d/b/a Trafalgar Tours, Violations of 49 U.S.C. § 41712 and 14 CFR Part 399*, Order 2007-8-24 (Aug. 24, 2007).

required to operate a departure date,” which conditions were buried in fine print numerous pages from where the original trip cost was disclosed. Failure to prominently display critical purchase requirements for a tour package that includes airfare, such as the 45-passengers condition, is a separate and distinct unfair and deceptive practice and unfair method of competition in 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.

### **Mitigation**

By way of mitigation and explanation, EOT states that it has operated for 36 years and believed its advertising practices were in compliance with the spirit and purpose of the Department’s laws and regulations. EOT states that it conscientiously strives to provide its customers with transparent and accurate pricing information and to assist its customers when selecting and purchasing a tour package through EOT. EOT states that it never knowingly or deliberately engaged in unfair or deceptive trade practices and has strived to comply with all applicable Federal and state laws, including the Department’s full-fare advertising rules. Accordingly, EOT states that it believed its website and brochures clearly and accurately conveyed its tour prices to its customers. Upon being contacted by the Department, EOT states that it immediately and fully cooperated with the Department in its investigation and educated itself with respect to the Department’s full-fare advertising rules. In addition, EOT states that upon receiving additional guidance from the Department, EOT immediately and voluntarily made costly modifications to its website and printed materials to bring its advertising practices into full compliance.

### **Decision**

The Enforcement Office views seriously the obligation of all ticket agents to comply with the Department’s regulations and to observe the statutory prohibition against engaging in unfair and deceptive practices. We have carefully considered the facts of this matter, including those provided by Educational Opportunities Tours, Inc., and believe that enforcement action is necessary. Educational Opportunities Tours, Inc., for its part, 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 14 CFR 399.80(f) and 399.84 and of 49 U.S.C. § 41712, and to the assessment of \$60,000 in compromise of potential civil penalties. 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 Educational Opportunities Tours, Inc., as well as by other ticket agents.

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 Educational Opportunities Tours, Inc., has violated 14 CFR 399.80(f) and 399.84 by causing to be published tour packages that include airfares 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 paragraph 2, above, Educational Opportunities Tours, Inc., 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, Educational Opportunities Tours, Inc., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
5. We find that by failing to prominently display critical purchase requirements for a tour package that includes airfare, Educational Opportunities Tours, Inc., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
6. We order Educational Opportunities Tours, Inc., and all other entities owned and controlled by, or under common ownership and control with Educational Opportunities Tours, Inc., and its successors and assignees, to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Educational Opportunities Tours, Inc., and its successors and assignees to further enforcement action;
7. Educational Opportunities Tours, Inc., is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4 and 5 above. Of this total penalty amount, \$30,000 shall be due in three installments. The first payment of \$10,000 shall be due and payable within 30 days of the date of issuance of this consent order. The second payment of \$10,000 shall be due and payable within 60 days of the date of issuance of this consent order. The third payment of \$10,000 shall be due

and payable within 90 days of the date of issuance of this consent order. The remaining \$30,000 shall become due and payable immediately if Educational Opportunities Tours, Inc., violates this order's cease and desist or payment provisions during the 12 months following the service date of this order; and

8. Payments 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 transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject Educational Opportunities Tours, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

**BY:**

ROSALIND A. KNAPP  
Deputy General Counsel

**(SEAL)**

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