



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

Issued by the Department of Transportation
on the 30th day of May, 2001

Vacation Express Holdings, Inc.

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

Served May 30, 2001

CONSENT ORDER

This consent order concerns advertisements by Vacation Express Holdings, Inc. ("Vacation Express") that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs Vacation Express to cease and desist from future violations and to pay compromise civil penalties.

Vacation Express recently published a fare advertisement in the *Washington Post* that begins with "Cancun 3 nights from \$359." The body of the ad contains individually listed fares for various destinations and the fine print contains the statement "Add. . . \$40-\$50 fuel surcharge." A similar advertisement also ran in the *Atlanta Journal* and *Denver Post*.

Under 14 CFR 399.84, any advertising by an air carrier or its agent that states a price for air transportation 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 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 non *ad valorem* taxes and fees, imposed or approved by the government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are stated in the advertisement. Fuel surcharges, however, must be included in the advertised fare. (See, *e.g.*, Order 95-1-39.) As published, the Vacation Express advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Vacation Express states that the non-compliant advertisement was the result of an error which violated Vacation Express's policies and procedures.

Vacation Express further states that it has explained the violation of the Department's rule and company policy to the employee responsible for the non-compliant ad and has communicated the particular requirements of 14 CFR Part 399.84 to each of Vacation Express's other employees and agents who have any authority with regard to the company's advertisements to ensure that no other employee creates advertisements that would violate that rule. Vacation Express notes in mitigation that the advertisements at issue disclosed the existence of the fuel surcharge and stated the price range of the fuel surcharge so that each consumer who read the advertisement in its entirety would be aware of the surcharge.

The Enforcement Office has carefully considered the information provided by Vacation Express but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Vacation Express have reached a settlement of this matter. Vacation Express consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301. Of this total penalty amount, \$15,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Vacation Express violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Vacation Express, as well as by airlines, travel agents, 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 Vacation Express Holdings, Inc. violated 14 CFR 399.84 by causing to be published fare advertisements that failed to state the entire price to be paid for the advertised air transportation by listing fuel surcharges separately from the advertised fares;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Vacation Express Holdings, Inc. also violated 49 U.S.C. § 41712;
4. Vacation Express Holdings, Inc. and all other entities owned and controlled by, or under common ownership and control with, Vacation Express

Holdings, Inc. 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. Vacation Express Holdings, Inc. is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that penalty amount \$15,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Vacation Express Holdings, Inc. violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Vacation Express Holdings, Inc. 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 within 15 days of the service date of this order 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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