



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

Issued by the Department of Transportation
on the **27th day of December 2002**

MLT Vacations, Inc.

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

OST-Docket 2002-12273

Served: December 27, 2002

CONSENT ORDER

This consent order concerns the failure of MLT Vacations, Inc., a tour operator, properly to include fuel surcharges, where applicable, in air tour prices listed in a number of print advertisements it published. The omission of fuel surcharges violated the full-price advertising requirements of section 399.84 of the Department's rules (14 CFR 399.84), and, in addition, violated 49 U.S.C. § 41712, the statutory provision prohibiting unfair and deceptive trade practices that is the basis for that consumer protection rule. This order directs MLT and its affiliated companies to cease and desist from future similar violations and to pay a compromise civil penalty.

MLT Vacations sells tours on Northwest and other air carriers.¹ In an advertising program extending over several months in 2001 and 2002, MLT promoted Northwest "World Vacations," in a series of advertisements in major newspapers. Among the newspapers publishing the advertisements were *USA Today*, the *Los Angeles Times* and the *Seattle Times-Post Intelligencer*. These advertisements included the statement, either in a sidebar or at the bottom, that the highlighted fare did not include a \$40 domestic fuel surcharge.

Under 14 CFR 399.84, the Department's full-fare advertising rule, fare advertisements by air carriers or their agents must state the full price to be charged the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel purchasing decisions. Long-standing enforcement case precedent adopted by the Department allows taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are approved or levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

¹ MLT Vacations, Inc., is a wholly-owned subsidiary of Northwest Airlines.

However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier or vendor fees, must be included in the advertised fare. The recent print advertisements of MLT Vacations were in clear violation of this requirement.

In mitigation, MLT states that its failure to include fuel surcharges in its print advertisements, after many years of strict compliance with all of the Department's advertising rules, was in response to advertising practices among independent travel agents, tour operators and brokers (with whom it competes) who, according to MLT, have been subject to less scrutiny by the Department. These independent agents, according to MLT, have routinely violated the Department's full-fare advertising rule with impunity for more than eleven years. MLT also asserts that its advertisements in question have not in fact cheated or misled consumers because the fuel surcharge dollar amount has been clearly stated, as contrasted with the advertising of its competitors which covers government-imposed charges and fuel charges with rubric such as "Taxes Extra," which conveys no information to facilitate the consumer's purchase decision. MLT, furthermore, states that it promptly corrected the language of its advertisements once it was contacted by the Department.

We consider any advertisement that does not comply with the full fare disclosure requirements to be in violation of both section 41712 and section 399.84 and we believe that the violations discussed above warrant enforcement action.² MLT Vacations, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 in print advertisements and to an assessment of \$50,000 in compromise of potential civil penalties. Of this penalty amount, \$25,000 shall be paid within 21 days of the service date of this order; the remaining \$25,000 shall be suspended for one year following the service date of this order, and then forgiven unless the carrier violates the order's cease and desist provision within that period or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and MLT Vacations may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by MLT Vacations, as well as by other vendors of air transportation.

² Contrary to MLT's claims regarding the Department's enforcement of its advertising rules, the Department has aggressively pursued enforcement action against non-air carrier sellers of air transportation that violate its rules when it becomes aware of such violations. (See *e.g.*, Hotwire, Inc., Order 2002-10-7; Travelocity.com, L.P., Order 2002-3-28; Site 59.com, Inc., Order 2002-3-23; Expedia, Inc., 2001-12-1; Grand Bahamas Vacations, 2001-6-2.)

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 MLT Vacations, Inc., violated 14 CFR 399.84 by advertising fares in the print media which failed to include applicable fuel surcharges, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, MLT Vacations, Inc., also violated 49 U.S.C. § 41712, which proscribes unfair and deceptive trade practices and unfair methods of competition;
4. MLT Vacations, Inc., and its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. MLT Vacations, Inc., is assessed \$50,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above; of that penalty amount, \$25,000 shall be due and payable within 21 days of the service date of this order. The remaining \$25,000 shall be suspended for one year following the service date of this order, and then forgiven, unless MLT Vacations, Inc., violates this order's cease and desist provisions within the suspension period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$50,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; and
6. 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 transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject MLT Vacations, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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

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