



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

Issued by the Department of Transportation  
On the Twenty-Ninth day of August, 2013

**Third Party Complaint of  
Benjamin Edelman**

**v.**

**Cathay Pacific Airways Limited**

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

**Docket OST 2013-0027**

**Served August 29, 2013**

**CONSENT ORDER AND ORDER OF DISMISSAL**

On February 6, 2013, Mr. Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR 302.401 against Cathay Pacific Airways Limited (Cathay) alleging that the carrier, in fare displays available through a third-party booking engine at <http://rtw.oneworld.com/>, misrepresented carrier-imposed surcharges as government taxes and fees. The website, owned and managed by oneworld Management Company, Inc. (oMC), provides a booking engine for round-the-world itineraries on behalf of its members, the oneworld alliance carriers. The complaint alleges that the fare misrepresentations on the oMC site violated 49 U.S.C. § 41712, which proscribes unfair and deceptive trade practices.

This order finds that certain fare displays, in the unique context of the oneworld website, did violate 14 CFR 399.84(a), the Department's full fare advertising rule, and section 41712 and that Cathay is responsible for the display of its fares. However, in light of the prompt remedial action of the carrier and oMC, we conclude that a cease and desist order without the assessment of civil penalties is warranted. This order, therefore, directs the carrier to cease and desist from further similar violations of the cited rule and statute and dismisses the complaint filed in this docket.

## The Complaint

The complaint is based on the Complainant's quotation in January 2013 on the oneworld site of a round-the-world itinerary originating in Chicago and reaching Vancouver by way of Hong Kong, Singapore, London, and a number of other points. The initial segment was on Cathay which was the ticketing carrier. The price quote displayed on the oMC site indicated a fare of \$3740 and "taxes" of \$1327, for a total cost of \$5,067. A second screen gave a segment-by-segment description of the itinerary, noting flight numbers, carriers, schedule information and other information pertinent to each flight. A complete breakdown of the tax components could only be viewed on a third screen, which would be displayed only if the consumer accessed a hyperlink. Viewing this screen was not a required part of the booking process. The hyperlink, however, provided a full breakdown of the additional charges showing that taxes comprised only \$287 of the \$1327 additional charges; therefore, \$1040, i.e., the bulk of these charges, were a combination of carrier-imposed surcharges.

The complaint urges the Department to direct the carrier to refund to passengers all funds collected as taxes that were in fact not remitted to government entities; to assess appropriate civil penalties; to refer the matter to foreign tax authorities for investigation of possible tax fraud; and to issue further clarifying guidance on the separation of taxes and non-government fees in air fare advertising.

## Answer of Cathay Pacific

In its answer of March 7, 2013, Cathay asserts that the complaint was based on test searches conducted through [rtw.oneworld.com](http://rtw.oneworld.com).<sup>1</sup> The round-the-world (RTW) booking tool on the oneworld site allows consumers to construct round-the-world itineraries on Cathay and 17 other oneworld carriers. Cathay, in its answer, further states that "fare displays and disclosures provided by the RTW Tool are determined by oMC and not individual carriers." In response to the complaint, Cathay contacted oMC regarding the misleading displays of taxes and surcharges. On receipt of Cathay's inquiry, oMC promptly corrected the displays by February 18, within two weeks of the filing of Mr. Edelman's complaint, to separate appropriately the two cost categories.<sup>2</sup>

## Decision

We believe that the displays on the oMC site, as they existed prior to February 18, 2013, were in violation of the provisions of 14 CFR 399.84(a) as further discussed in the Enforcement Office's industry guidance of February 21, 2012.<sup>3</sup> The Enforcement Office and Cathay have reached a negotiated settlement of this matter under which the carrier, without admitting or denying the violations described above, consents to the issuance of this order to cease and desist from future

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<sup>1</sup> Answer at 2.

<sup>2</sup> Information provided in response to an inquiry by the Office of Aviation Enforcement and Proceedings indicates that oMC is not a ticket agent as defined in 49 U.S.C. 40102(a)(45). A redacted version of the oMC response is included in the Docket which removes certain commercially sensitive information.

<sup>3</sup> Available at: <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712. However, in view of the prompt and complete remedial action undertaken by Cathay and oMC, we find that civil penalties are not warranted in this instance. In addition, by this order, we are dismissing the complaint filed in this docket.

This order is issued under the authority contained in 49 CFR Part 1.

**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 Cathay Pacific Airways Limited is responsible for the violation of 14 CFR 399.84(a) that occurred when Cathay's agent, oneworld Management Company (oMC), published fare displays that failed to accurately separate taxes and government fees from carrier-imposed fees and surcharges;
3. We find that the conduct described in paragraph 2 constitutes an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712;
4. We order Cathay Pacific Airways Limited, and its successors and assignees, to cease and desist from similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712; and
5. We dismiss the complaint filed in Dkt. DOT-OST-2013-0027.

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:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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