



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

**Issued by the Department of Transportation
on the 2nd day of August, 2023**

AIR TRANSAT A.T. INC.

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 259**

**Dockets OST-2023-0001
OST-2020-0060
OST 2020-0123
OST-2020-0124
OST-2020-0211
Served August 2, 2023**

CONSENT ORDER AND ORDER OF DISMISSAL

The U.S. Department of Transportation's (Department or DOT) Office of Aviation Consumer Protection (OACP) has determined that Air Transat A.T. Inc. (Air Transat) routinely failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. Since March 2020, the Department has received more than 150 complaints alleging that Air Transat failed to provide refunds after cancelling flights¹. Air Transat did not provide data on the total number of refund requests that it received or the length of time it took to process all these requests. However, Air Transat acknowledged that, from March 18, 2020 to November 30, 2020, it provided credits, instead of refunds, to many consumers holding non-refundable tickets for flights to or from the United States that the carrier cancelled and that it was not until April 29, 2021 that it permitted all consumers who still held credits for carrier-cancelled flights to exchange them for refunds. Our investigation revealed that several thousand Air Transat consumers, mostly for flights that were cancelled before December 1, 2020, still had credits that were eligible to be refunded on April 29, 2021. Given these facts, OACP is of the view that Air Transat subjected thousands of consumers to extreme delay in making refunds available for flights to and from the United States that the carrier cancelled. Additionally, it appears that Air

¹ According to Air Transat, approximately 50 of those complaints did not involve flights to or from the United States.

Transat failed to respond to consumer complaints in a timely manner, also in violation of Section 41712 and 14 CFR Part 259. This order directs Air Transat to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$525,000 in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier² may provide foreign air transportation³ only if the foreign air carrier holds a permit from the Department authorizing the foreign air transportation or has a valid exemption from that section.⁴ A foreign air carrier that holds a foreign air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practice in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.⁵

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, OACP issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 has had on air travel has not changed the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁶ Then, in December 2020, the Department published in the Federal Register a final rule titled "Defining Unfair or Deceptive Practices."⁷ The rule defined the terms "unfair" and "deceptive" for purposes of Section 41712. Pursuant to the rule, a practice is "unfair" to consumers within the meaning of Section 41712 if it causes substantial

² 49 U.S.C. § 40102(a)(21) defines a "foreign air carrier" as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

³ 49 U.S.C. § 40102(a)(5) defines "air transportation" as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." 49 U.S.C. § 40102(a)(23) defines "foreign air transportation" as "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft."

⁴ The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

⁵ The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. See *Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

⁶ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020; "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁷ 85 Fed. Reg. 78707 (December 7, 2020).

harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.⁸ For the reasons set forth below, the practice of cancelling or significantly changing a flight to or from the United States without providing a refund is “unfair” as that term is defined by regulation, irrespective of the reason for the cancellation.

First, the practice imposes substantial harm to consumers because they paid money to the carrier for a service that the carrier did not provide. Consumers incur harm from delays in receiving refunds, as well as from the time, effort, and expense involved in seeking a refund.

Second, the harm is not reasonably avoidable. A consumer acting reasonably would believe that he or she was entitled to a refund under U.S. law if the carrier cancelled or significantly changed the flight whatever the reason for the cancellation or significant change. Moreover, a reasonable consumer would not believe that it is necessary to purchase a more expensive refundable ticket in order to be able to recoup the ticket price when the *airline* fails to provide the service paid for through no action or fault of the consumer. Reasonable consumers understand that “refundable” tickets are valuable because they ensure a refund if the *passenger* cancels their own flight reservation.

Third, the harm is not outweighed by countervailing benefits to consumers or competition. The Department seeks to regulate practices that are injurious to consumers in their net effects.⁹ In enforcing Section 41712, which is modeled on Section 5 of the Federal Trade Commission (FTC) Act, the Department recognizes, like the FTC, that practices may be harmful to consumers in some ways, but beneficial in others. For example, offsetting benefits may include lower prices or a wider availability of products and services resulting from competition.¹⁰ Here, there is no offsetting benefits to consumers that would outweigh the harm of retaining passengers’ funds for lengthy periods of time.

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR 259.5, U.S. and foreign air carriers operating at least one aircraft having a seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan’s terms.¹¹ Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712. Section 259.5(b)(5) requires: “Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation.” OACP’s

⁸ 14 CFR 399.79(b)(1).

⁹ See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

¹⁰ See *Id.*

¹¹ This obligation is separate from the requirements in section 259.6 relating to posting the Customer Service Plan on the covered carrier’s website. Under 14 CFR 259.6(b), “each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers, and that is required to adopt a customer service plan, shall post its current customer service plan on its website in easily accessible form.”

position is that refunds are “due” when failure to provide them would constitute an unfair or deceptive practice under Section 41712. Regulation Z states, at 12 CFR 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.¹²

In addition, 14 CFR 259.7(c) requires carriers to provide a written acknowledgment of each complaint regarding its scheduled service to the complainant within 30 days of receiving the complaint, and to provide a substantive written response to each complainant within 60 days of receiving the complaint. A carrier’s failure to provide a written acknowledgment within 30 days and a written substantive response within 60 days violates 14 CFR 259.7(c). Failure to respond to consumer complaints as required also constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Facts and Conclusions

Air Transat, a foreign air carrier, holds a foreign air carrier permit to operate flights to and from the United States pursuant to 49 U.S.C. § 41301. Air Transat uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of Air Transat’s foreign air carrier permit is that Air Transat “comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.”¹³ Accordingly, Air Transat is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

Since March 1, 2020, more than 150 consumers have submitted informal complaints to the Department regarding Air Transat’s failure to provide timely refunds for flights that Air Transat cancelled. Air Transat has not provided data on the total number of refund requests that it received relating to flights to or from the United States or the length of time it took to process all these requests. However, Air Transat admitted that, on March 18, 2020, the carrier stopped providing refunds and began issuing travel credits to consumers for flights cancelled by the carrier. Air Transat also acknowledged that, although it changed its policy twice to allow certain groups of consumers to obtain refunds either upon request or automatically and discontinued issuing vouchers in lieu of refunds on December 1, 2020, it did not begin to make refunds available to all consumers whose flights to and from the United States had been cancelled by the carrier until April 29, 2021. At that time, Air Transat allowed consumers who still had credits for cancelled flights to exchange the credits for refunds. Our investigation revealed that, although the exact number is unknown, at a minimum, several thousand consumers still had refund-eligible credits for flights that were cancelled by the carrier. Most of these bookings were for flights that were cancelled from March 18 through November 30, 2020. Air Transat’s extreme delay (over 100 days) in making refunds available to these thousands of passengers for flights to and from the United States that the carrier cancelled was an unfair practice.

¹² In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. *See, e.g., American Airlines*, DOT Order 2017-7-9.

¹³ *See, e.g., Docket DOT-OST-1998-3854-002.*

In addition to failing to provide prompt refunds to consumers that were entitled to them, Air Transat did not provide timely responses to consumer complaints that DOT had forwarded to the carrier. Failing to provide timely responses to consumer complaints is a violation of Air Transat's own customer service plan, which states that it will provide a substantive response to all written complaints within 60 days of receipt, as well as of 14 CFR 259.7(c).

Response

Air Transat believes its refund policies during the first year of the COVID-19 pandemic reflected a measured and justifiable approach to an extraordinary and unprecedented crisis.

According to Air Transat, due to the closing of the United States and Canada's common border in March 2020, it was forced to almost completely suspend operations and furlough approximately 96% of its administrative staff, pilots and cabin crew. Further, Air Transat states that approximately 1500 employees, representing approximately 30% of its pre-pandemic work force, were permanently laid off or chose not to return to Air Transat. According to Air Transat, it was only able to resume scheduled transborder service on September 9, 2021.

Air Transat states that the United States and Canada implemented significantly different approaches to carrier requirements regarding passengers holding tickets on flights cancelled due to the impact of COVID-19 on air transportation. While the Department advised carriers they must refund passengers for flights cancelled by the airline, the Canadian Transportation Agency (CTA) permitted carriers to issue vouchers to affected passengers at a time that, according to Air Transat, Canadian carriers, unlike U.S. carriers, were not receiving significant governmental financial assistance. Air Transat asserts that it did not secure a commitment to that financial assistance until April 29, 2021 and it argues that the assistance provided to U.S. carriers by the U.S. government was unlike the assistance provided to Air Transat by the Canadian government because the aid consisted of interest-bearing loan instruments that must be repaid.

In Air Transat's view, it adopted a balanced approach to the different U.S. and Canadian regulatory regimes. Air Transat asserts that, as of April 24, 2020, shortly after issuance of the April 3, 2020, Enforcement Notice, it began processing refund requests from U.S. point-of-sale passengers.¹⁴

Air Transat states that it chose to act in a manner consistent with then applicable Canadian requirements after April 24, 2020, issuing vouchers and credits to non-U.S. point-of-sale passengers. Following its agreement with the Canadian Enterprise Emergency Funding Corporation on April 29, 2021, Air Transat extended its refund policy to all point-of-sale passengers and began the process of refunding unused credits and vouchers.

With respect to its failure to timely respond to consumer complaints, Air Transat asserts that it prioritized the limited resources available to issuance of vouchers and refunds and that in its

¹⁴ OACP does not view Air Transat's actions as consistent with the Department's Enforcement Notices or refund requirements.

view, the volume of refund complaints made it impossible to process complaints any faster than it did.

Decision

OACP views seriously Air Transat's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, including all formal and informal complaints filed against Air Transat, OACP believes that enforcement action is warranted.¹⁵ In order to avoid litigation, and without admitting the violations described above, Air Transat consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$525,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Air Transat and other carriers.

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 by significantly delaying the payment of refunds to passengers for flights to or from the United States that Air Transat cancelled, Air Transat engaged in unfair practices in violation of 49 U.S.C. § 41712;
3. We find that by failing to adhere to its customer commitment to provide prompt refunds, Air Transat violated 14 CFR 259.5(b)(5) which also constitutes a violation of 49 U.S.C. § 41712;
4. We find that by failing to provide a substantive response to consumer complaints within 60 days of receipt, Air Transat violated 14 CFR 259.7 and engaged in unfair practices in violation of 49 U.S.C. § 41712;
5. We order Air Transat and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712, 14 CFR 259.5, and 14 CFR 259.7;

¹⁵ OACP received five formal complaints relating to this matter. *Cyr v. Air Transat* (Docket DOT-OST-2020-0054), *Smith v. Air Transat* (Docket DOT-OST-2020-0060), *Aongya v. Air Transat* (Docket DOT-OST-2020-0123), *Lynch v. Air Transat* (Docket DOT-OST-2020-0124), and *Kalichman v. Air Transat* (DOT-OST-2020-0211). OACP found the complaints in Dockets DOT-OST-2020-0060, DOT-OST-2020-0123, DOT-OST-2020-0124, and DOT-OST-2020-0211 to be meritorious. To promote the efficient use of OACP's resources, OACP is dismissing these complaints through this Consent Order and concurrently providing notice of the Consent Order to the complainants. OACP found the complaint in Docket DOT-OST-2020-0054 to lack standing and has filed a separate order of dismissal in that Docket.

6. We order Air Transat to continue to provide refunds to those consumers who are entitled to a refund for flights to or from the United States that were cancelled by the airline, regardless of when their requests are submitted;
7. We assess Air Transat \$525,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2, 3, and 4 above. Of this amount,
 - a. \$220,000 shall be due and payable within 60 days of the issuance of the order;
 - b. \$220,000 shall be due and payable within 180 days of the issuance of the order; and
 - c. \$85,000 shall be credited to Air Transat for refunds provided to passengers who voluntarily cancelled their non-refundable tickets for flights to or from the United States and were not entitled to refunds under U.S. law.
8. We order Air Transat to pay, under the installment plan described in order paragraph 7, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Air Transat to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.
9. We dismiss the complaints filed in Dockets DOT-OST-2020-0060, DOT-OST 2020-0123, DOT-OST-2020-0124 and DOT-OST-2020-0211.

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:

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