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

Issued by the Department of Transportation
on the 14th day of December, 2016

Third Party Complaint of **Benjamin Edelman** **v.** **American Airlines, Inc.** **Violations of 49 U.S.C. § 41712 and** **14 CFR 399.84(a)**	**Docket DOT-OST-2013-0213** **Served December 14, 2016**

Third Party Complaint of **Darren Martin** **v.** **American Airlines, Inc.** **Violations of 49 U.S.C. § 41712 and** **14 CFR 399.84(a)**	**Docket DOT-OST-2014-0029** **Served**

Third Party Complaint of **Robert Samstein** **v.** **American Airlines, Inc.** **Violations of 49 U.S.C. § 41712 and** **14 CFR 399.84(a)**	**Docket DOT-OST-2014-0033** **Served**

CONSENT ORDER AND ORDER OF DISMISSAL

In late 2013 and early 2014, Benjamin Edelman, Darren Martin, and Robert Samstein (collectively, the Complainants) filed separate formal complaints against American Airlines, Inc. (American) pursuant to 14 CFR Part 302. While the factual allegations in the complaints differ, each Complainant alleges that American misrepresented carrier-imposed surcharges as "taxes" during the booking process. Pursuant to 14 CFR 302.13, we have consolidated the three proceedings for disposition.

This order finds that by misrepresenting carrier-imposed surcharges as "taxes," American violated 14 CFR 399.84(a), committed unfair and deceptive trade practices in violation of 49 U.S.C. § 41712, and violated the cease-and-desist provisions of *American Airlines, Inc.*, DOT Order 2013-12-6 (December 11, 2013). This order directs American to cease and desist from further similar violations of the cited rule, statute, and order; assesses a compromise civil penalty of $65,000; and dismisses the complaints filed in these dockets.

We will briefly summarize the pleadings in all three matters.

Edelman (DOT-OST-2013-0213)

The Complaint

Mr. Edelman filed his complaint on December 12, 2013. He states that on December 11-12, 2013, on three occasions, he used American's website, www.aa.com, to request frequent-flyer award travel to London. He alleges that on each occasion, the site displayed a price consisting of a number of frequent flyer miles, plus a dollar amount. He further alleges that in each instance, when he clicked on a link marked "Show Trip Details," a popup display itemized the amount of "Carrier-Imposed Fees" as "$0.00," and the amount of "Taxes" as the full dollar amount displayed in the original price.[1] According to Mr. Edelman, in each case, the dollar amount at issue was in fact comprised mostly of carrier-imposed fees, and not taxes. Mr. Edelman contends that American's web site falsely represented that no carrier-imposed fees would be charged for the tickets at issue. He further contends that these misrepresentations constitute violations of 14 CFR 399.84(a) and unfair and deceptive business practices in violation of 49 U.S.C. § 41712. He argues that American's conduct is particularly egregious because the Department recently ordered American to cease and desist from this very conduct in DOT Order 2013-12-6.

[1] Specifically, he alleges the following. On December 11, 2013, he searched for one-way business class award travel from Boston to London. The site listed a price of 50,000 miles, plus $438.20. The site then listed the amount of carrier-imposed fees as $0.00, and the amount of taxes as $438.20. Next, on the same day, he requested one-way coach award travel from Boston to London. He was quoted a price of 20,000 miles, plus $253.20. The site listed the amount of carrier-imposed fees as $0.00, and the amount of taxes as $253.20. Finally, on December 12, 2013, he searched for round-trip coach award travel from Washington-Dulles to London. The site quoted a price of 40,000 miles, plus $692.30. The site listed the amount of carrier-imposed fees as $0.00, and the amount of taxes as $692.30.

Answer of American

American filed its answer on January 7, 2014. American does not dispute Mr. Edelman's factual allegations regarding the website displays at issue. American states that upon learning of the allegations on December 12, 2013, it began an immediate internal investigation to discover the cause of the error. American contends that the error took place on or about October 31, 2013, when it attempted to improve its website by itemizing the amount of taxes and fees that apply to frequent-flyer reward purchases. American contends that as a result of the coding error, all carrier-imposed surcharges were incorrectly displayed in the "taxes" line of the "Show Trip Details" popup. American states that it corrected the error on December 16, 2013, just four days after learning of the issue through the complaint.

American emphasizes that the coding error appeared on only one popup display within the multi-page process of purchasing international award travel. According to American, the popup was not displayed to all consumers by default; it was only viewed by consumers who chose to click on a link marked "Show Trip Details." By contrast, American notes when all customers proceeded to the "Review and Pay" page, a proper itemization of taxes and fees appeared. American states that consumers could not be reasonably deceived in their purchase decisions, because the proper itemization appeared immediately before the consumer made the final decision to purchase the ticket. American also notes that it properly itemized taxes and fees on the post-purchase screen. American further contends that the error did not extend to any portion of the process of booking domestic flights. American argues that under the circumstances, no further action by the Department is necessary.

Martin (DOT-OST-2014-0029)
Samstein (Docket DOT-OST-2014-0033)

These complaints also involve alleged misrepresentation of fees as taxes, and are substantially similar to each other.

Martin Complaint

Mr. Martin filed his complaint on March 8, 2014. He states that he used American's website to redeem miles for one-way award travel for his parents from Boston to London (itinerary BOS-ORD-LHR). He states that two weeks later, American notified him that this itinerary had been changed because the early-morning BOS-ORD flight was cancelled. Under the new itinerary, the passengers would be required to fly to Chicago one day earlier than scheduled, stay overnight, and then fly out in the morning from ORD to LHR. He states that he then spoke to a representative about rebooking to a direct flight from BOS to LHR on British Airways. He alleges that four different American employees (a reservations agent, a reservations supervisor, a duty manager, and an American representative on Twitter) informed him that to change his booking to a British Airways flight using frequent flier miles, American would charge $250 per ticket in "taxes." He states that in each conversation, he informed the employees that the $250 charge was a carrier-imposed fee, not a "tax." He further states that the employees generally

responded that the charge could not be waived regardless of whether it was considered a tax or a fee.[2]

Mr. Martin alleges that under the circumstances, American is contractually obligated to provide transportation on British Airways without additional charges. He relies primarily on Rule 80 of American's International General Rules Tariff, and on "Rule 240/80," found on American's website.[3] He also alleges that American's failure to book him on a British Airways flight at no additional cost is inconsistent with promises that American and British Airways made in their Joint Application for Antitrust Immunity (Joint Application; *see* Docket DOT-OST-2008-0252). Finally, he claims that by misrepresenting carrier-imposed fees as "taxes," American committed an unfair and deceptive practice in violation of 49 U.S.C. § 41712, and violated the cease-and-desist provisions of DOT Order 2013-12-6.

Samstein Complaint

Mr. Samstein filed his complaint on March 11, 2014. He states that he booked a nonstop daytime flight on American from New York to London (JFK-LHR) using award miles. He states that American cancelled his flight and rebooked him on a less favorable itinerary, involving an extended layover in Raleigh-Durham and an overnight flight to London. He states that after the cancellation, the only available flights that fit his needs were on British Airways. He states that three different American employees (a reservations supervisor, a duty manager, and an American representative on Twitter) informed him that to rebook a more favorable itinerary on a British Airways flight using frequent flier miles, he must pay $250 per ticket in "taxes." He further states that in his conversations with these employees, he repeatedly used the phrase "fuel surcharge" to describe the fee, because he knew that the charge was not a tax. Samstein states that after being told that the additional charges were non-waivable, he ultimately accepted American's offer of a refund, because he felt that he had no other meaningful choice.

Like Mr. Martin, Mr. Samstein alleges that: (1) American is obligated under Rule 80 and Rule 240/80 to provide transportation on British Airways without additional charges; (2) American's failure to do so is inconsistent with promises that American and British Airways made in their Joint Application; and (3) by misrepresenting carrier-imposed fees as "taxes," American committed an unfair and deceptive practice and violated the cease-and-desist provisions of DOT Order 2013-12-6.

Consolidated Answer of American

By permission, American filed a consolidated answer to the Martin/Samstein complaints. American argues that Rule 80 applies to this matter, and that the plain terms of Rule 80 do not require American to rebook passengers on a British Airways flight at no additional charge. American also contends that collecting a fee from passengers for such a rebooking does not

[2] Mr. Martin's pleadings do not indicate which flight, if any, he ultimately chose; however, he states that rejected American's offer of a refund. Martin Complaint at 7.

[3] https://www.aa.com/i18n/agency/Booking_Ticketing/Reaccom/rule_240_80.jsp (last checked December 2014). This page no longer appears on www.aa.com.

violate any promises made in the Joint Application. Finally, American contends that Mr. Martin and Mr. Samstein are both sophisticated passengers who, by their own admission, were not deceived by any statements that American personnel may have made regarding the nature of the fees to be charged.

Consolidated Reply and Response

By permission, the parties filed a limited final round of pleadings. The parties expanded and developed their initial arguments without raising new substantive issues.

Relevant Law, Analysis, and Decision

For ease of disposition, we will first address the issues that pertain only to the complaints by Mr. Martin and Mr. Samstein. We will conclude with the issue that is common to all three complaints: alleged misrepresentation of taxes and fees.

1. Martin/Samstein: Rule 80, Refundability, and Breach of Contract

Mr. Martin and Mr. Samstein claim that American is contractually obligated to rebook them on British Airways at no additional cost, pursuant to the plain language of Rule 80 of American's International General Rules Tariff. At the time of the Complaint, Rule 80 stated, in relevant part:

> Change in Schedule
> When a passenger will be delayed because of a change in its schedule, carrier will arrange to:
> transport the passenger over its own lines to the destination, next stopover point or transfer point shown on its portion of the ticket, without stopover at no additional cost to the passenger, provided that a passenger who paid an Economy Class fare will be transported on one of its First Class flights only if such flight will provide an earlier arrival than its next Economy Class flight on which space is available.
> endorse the unused ticket for the purpose of rerouting over another carrier; or
> refund in accordance with Rule 90 (REFUNDS). [4]

Mr. Martin and Mr. Samstein argue that Rule 80 provides three options when a passenger will be delayed because of a change in schedule: (1) transporting the passenger over its own lines to the destination, at no additional cost; (2) endorsing the unused ticket for rerouting with another carrier; or (3) providing a refund. They claim that the contract language is ambiguous as to who may exercise these options; therefore, the passenger should be able to choose. Moreover, they claim that their chosen option (rerouting on another carrier) does not mention additional fees, so no fees should be imposed. American, in contrast, contends that it is the carrier's prerogative to choose a rebooking option. American states that it satisfied its obligations by choosing option (1): rebooking the passengers on another American flight at no additional cost.

[4] See https://www.aa.com/i18n/Tariffs/AA1.html#DATE:_02/25/11_ATPCO_RULES_TEXT_AA1-0080AA (now revised; punctuation and line breaks in original).

We will begin by analyzing this claim under section 41712, which prohibits unfair or deceptive practices in air transportation or the sale of air transportation. Generally, a practice is unfair to consumers if it causes or is likely to cause substantial harm, the harm cannot reasonably be avoided, and the harm is not outweighed by any countervailing benefits to consumers or to competition.[5] A practice is deceptive if it misleads or is likely to mislead a consumer acting reasonably under the circumstances with respect to a material issue (*i.e.*, one that is likely to affect the consumer's decision with regard to a product or service).[6]

The Department would view a carrier's failure to provide a prompt refund to a passenger of the ticket price and related optional fees when a flight is canceled or significantly delayed to be an unfair practice. *See* Preamble to 2011 Final Rule, "Enhancing Airline Passenger Protections," 76 FR 23129 (April 25, 2011) ("We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (*e.g.*, greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel….[R]efusal to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712[.] ")

Here, at the time of the Complaint, Rule 80 appeared to give American the option of rerouting a passenger on its own lines or with another carrier, without offering a refund in the event of a significant schedule change. It is an unfair practice for a carrier to refuse to offer a refund in such circumstances. As noted above, however, Mr. Martin and Mr. Samstein both state that American did in fact offer a refund.

The Department may find that a carrier commits a deceptive practice by failing to honor a commitment that it has made to the public. Here, however, we see no explicit commitment from American that passengers would be able to choose their preferred rebooking option (here, rerouting with another carrier) under the version of Rule 80 that was in effect at the time of the complaint.[7]

We recognize that in their breach of contract claims, Mr. Martin and Mr. Samstein do not contend that American committed unfair or deceptive practices. Their claim (i.e., that American is contractually obligated to transport passengers at no additional cost on British Airways) is based purely on the language of their contract with American, and on ordinary principles of contractual interpretation. Likewise, American's defense is based on a reading of the plain

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[5] The statute providing the Department authority to regulate unfair and deceptive practices, 49 U.S.C. § 41712, is modeled after Section 5 of the FTC Act, 15 U.S.C. § 45. In analyzing whether a practice of a carrier or ticket agent action is unfair, we use a standard similar to the Federal Trade Commission's standard for unfairness. See http://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness.

[6] The Federal Trade Commission's standard for deception is instructive. See http://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception.

[7] We note that during the pendency of this proceeding, AA substantially revised the Rule. It now provides, in relevant part, that the carrier will, *at its discretion*, either (1) transport the passenger on an American-operated flight; or (2) endorse the unused ticket for the purpose of rerouting over another carrier with whom American has an agreement to do so. The rule also now clearly provides that it will issue a refund in lieu of either of those two options if the passenger so requests. https://www.aa.com/i18n/Tariffs/AA1.html#0080.

language of the contract. The proper forum for a straightforward breach of contract claim involving frequent flier programs is a state or federal court of competent jurisdiction. *Northwest, Inc. v. Ginsberg*, 134 S.Ct. 1422 (2014); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). We express no opinion on whether Mr. Martin or Mr. Samstein would be successful in such an action.

2. Rule 240/80 (Martin/Samstein)

The parties also dispute whether a page of American's website, known as "Rule 240/80," obligates American to reaccommodate Mr. Martin and Mr. Samstein on British Airways at no additional charge. Specifically, Mr. Martin and Mr. Samstein contend in the event of a schedule change of over 90 minutes, "Rule 240/80" permits them to choose to be rescheduled on a codeshare partner of American (such as British Airways) under the terms of the original ticket.[8]

Again, we will begin by analyzing this claim under section 41712. By way of background, we note that "Rule 240/80" no longer appears on www.aa.com. At the time of the complaint, "Rule 240/80" was a page of American's website with the full title of "Schedule Change – Rule 240/80 - Schedule Irregularity - Travel Agency Guidelines." It was part of a broader set of web pages arranged under the heading "Agency Reference." "Rule 240/80" gave detailed guidance to travel agents on how to process rebookings in the event of schedule irregularities. It explained to travel agents that schedule changes are governed by Rule 240 in the case of domestic tariffs, and by Rule 80 in the case of international tariffs. The page was largely divided into three columns. The first column set forth various scenarios under which "Travel agents may reissue" tickets. The second column provided the procedures by which "travel agents may rebook new itinerary" under each scenario. The final column instructed travel agents on how to annotate each reissued ticket. Here, it is undisputed that both Mr. Martin and Mr. Samstein booked their tickets directly with American. Most importantly, it is clear that the page at issue was directed to travel agents, not to consumers.

We see no evidence of an unfair practice in American's failure to apply Rule 240/80 to Mr. Martin or Mr. Samstein. As noted above, a practice is unfair to consumers if it causes or is likely to cause substantial harm, the harm cannot reasonably be avoided, and the harm is not outweighed by any countervailing benefits to consumers or to competition. Here, it appears that Rule 240/80 would apply to passengers who booked their flights through travel agents. Mr. Martin and Mr. Samstein booked their flights directly with American. We see no likelihood of substantial unavoidable harm in American's decision not to apply Rule 240/80 under these circumstances.

Likewise, we see no evidence of a deceptive practice in American's decision not to apply Rule 240/80 to Mr. Martin or Mr. Samstein. A practice is deceptive if it misleads or is likely to mislead a consumer acting reasonably under the circumstances with respect to a material issue (*i.e.*, one that is likely to affect the consumer's decision with regard to a product or service). We

[8] Mr. Martin and Mr. Samstein both quote from "Rule 240/80" in their complaint. Martin Complaint at 17; Samstein Complaint at 14. The "Rule 240/80" page was updated on November 17, 2014, and now has been taken off of American's web site entirely.

find that a reasonable consumer would conclude that Rule 240/80 applies to the actions of ticket agents, and not to direct bookings with the carrier.

Mr. Martin and Mr. Samstein do not claim that American committed unfair or deceptive practices, or that American violated any particular Departmental regulation. Instead, they argue that the page is easily accessible on American's website, and that American should be bound by the statements found therein. In that sense, their claim is akin to a breach of contract action. American responds that "Rule 240/80" is directed to travel agents, not to consumers. To the extent that this claim is a pure claim for breach of contract, we again note that the proper forum for such a claim is a state or federal court of competent jurisdiction. *Northwest, Inc. v. Ginsberg*, 134 S.Ct. 1422 (2014); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995). We express no opinion on whether Mr. Martin or Mr. Samstein would be successful in such an action.

3. Breach of promises made in Joint Application (Martin/Samstein)

Next, Mr. Martin and Mr. Samstein allege that by failing to rebook them on British Airways at no cost, American violated the promises that it made to the Department in its Joint Application with British Airways. Specifically, they note that in seeking antitrust immunity for an integrated alliance, American and British Airways promised numerous consumer benefits, including "reciprocal" frequent-flier programs. They argue that the frequent-flier programs are not truly "reciprocal" if American collects additional fees charged by British Airways for rebooking award travel.

We decline to find in this matter that by failing to rebook Mr. Martin and Mr. Samstein on British Airways at no cost, American violated the promises that it made to the Department in its Joint Application with British Airways. See DOT Order 2010-2-8 (February 13, 2010) (approving joint business agreements and making a grant of antitrust immunity). We observe that the Joint Application does not specifically promise that the British Airways and American frequent flier programs will be identical, or that one airline will book flights using the other airline's frequent flier program at no additional cost.[9] Rather, the Joint Applicants committed to, and the Department reviewed, a pro-competitive framework of commercial agreements that provided the participating airlines with the incentive to substantially improve frequent flyer cooperation and deliver substantially more benefits to consumers than would be possible without a grant of antitrust immunity. The Office of the Assistant Secretary for Aviation and International Affairs, which issued the order granting antitrust immunity, actively monitors the Joint Business Agreement at issue. We conclude that an individual enforcement case is not the proper forum for gauging the representations that were made to the Department in the Joint Application.

[9] The Joint Application speaks generally about the ability of consumers to "earn and burn" frequent flier miles reciprocally on American and British Airways flights.

4. Misrepresentation of taxes and fees (Edelman/Martin/Samstein)

Finally, each Complainant contends that American has continued to misrepresent carrier-imposed fees as "taxes," in violation of 49 U.S.C. § 41712, 14 CFR 399.84(a), and DOT Order 2013-12-6.

In relevant part, section 399.84(a) provides that a carrier may separately state the components of a fare, but those statements may not be false and misleading. On February 21, 2012, the Enforcement Office explained that including carrier-imposed surcharges and other fees not imposed by a government under the label of "taxes," or under the label "taxes and fees," violates section 399.84(a) and is an unfair and deceptive practice in violation of 49 U.S.C. § 41712.[10] The Enforcement Office reasoned that such a practice "is likely to confuse consumers and deceive them into believing the government taxes and fees associated with their airfare are higher than they actually are."

In DOT Order 2013-12-6, we concluded that American violated 14 CFR 399.84(a) and 49 U.S.C. § 41712 when it referred to carrier-imposed fees as "taxes" in telephone conversations with consumers and in web site displays. In that order, we directed American to pay $60,000 in civil penalties, and to cease and desist from future similar violations.

a. Edelman (web site displays)

Mr. Edelman asserts, and American admits, that after DOT Order 2013-12-6 was issued, a page of American's web site relating to international rewards travel inaccurately placed carrier-imposed fees under the category of "taxes." Such conduct violates 14 CFR 399.84(a) and 49 U.S.C. § 41712, and falls squarely within the cease-and-desist provisions of the Order.

American asserts the following mitigating factors: (1) the violation stemmed from a computer coding error which was corrected promptly after it was discovered; (2) the improper display appeared on an optional popup, not necessarily viewed by all consumers, while correct information was visible to all consumers on all other pages during the booking process; and (3) the error was limited to one page of the international rewards booking process, and did not extend to domestic bookings.

More specifically, American states that the coding error impacted only a very small segment of tickets sold on its website. According to American, the coding error did not impact revenue tickets; it only impacted award tickets, and further only impacted "MileSAAver" award tickets for transoceanic flights operated by a single participating carrier in American's AAdvantage program – British Airways – and not flights operated by any other U.S. or foreign air carrier.

Despite these mitigating factors, we believe that enforcement action is warranted. Considering American's full awareness of the need to properly differentiate taxes from carrier-imposed fees, the violations addressed in the prior Order, the carrier's size and sophistication, and the likelihood that the violations would have continued but for the complaint filed in this case, we

[10] "Additional Guidance on Airfare/Air Tour Price Advertisements" (February 21, 2012), available at http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes.

cannot dismiss American's violations of 14 CFR 399.84(a), 49 U.S.C. § 41712, and Order 2013-12-6 as *de minimis*.

b. Martin/Samstein (telephone conversations and social media exchanges)

As noted above, Mr. Martin and Mr. Samstein allege that numerous American employees referred to carrier-imposed fees as "taxes" during conversations about attempts to rebook on British Airways flights. While these oral conversations were not recorded, American staff also discussed taxes and fees with Mr. Martin and Mr. Samstein through Twitter messages.

American provided supplemental information to the Enforcement Office regarding these allegations. American does not concede that one or more of its employees may have referred to carrier-imposed fees as "taxes" at times during their conversations with Mr. Martin and Mr. Samstein. American further states that: (1) occasionally, Mr. Martin and Mr. Samstein referred to the fee as a "tax," at which point American's employees responded with similar terminology; (2) at the end of each conversation, Mr. Martin and Mr. Samstein knew that the charge was a carrier-imposed fee; and most importantly, (3) both Mr. Martin and Mr. Samstein admitted in their complaints that they knew the true nature of the charge at all times. American contends that there can be no deceptive practice when the consumer is, by his own admission, not deceived.

As to the possibility of others being deceived, American states that the telephone calls between the Complainants and American were obviously one-on-one conversations and thus no other consumers could have been deceived by the purported misstatements, even if they were made as the Complainants alleged. American states that as to the Samstein Twitter exchange, with the exception of the first message from Mr. Samstein to American in which he referred to the charge as "fuel surcharges" (not "taxes"), all of the other messages were direct messages and were not viewable by others. Regarding the Twitter exchange described in the Martin Complaint, American states that none of the Twitter messages were sent as direct messages. According to American, Mr. Martin's initial tweet referred simply to "taxes," and the response from American addressed the same topic, telling Mr. Martin that American would not waive taxes. American states that when Mr. Martin expanded the scope of the conversation in a subsequent tweet to include the topic of surcharges, the responding tweet similarly expanded to address both taxes and charges, stating that American would not waive either. American's position is that it should not be faulted where its agent's tweets were congruent with the scope of the tweets from the customer. According to American, even if another customer was following the Twitter exchange with Mr. Martin, the customer would have understood first that American would not waive taxes (which is true), and then that American would not waive taxes or surcharges (also true). Therefore, American contends that other consumers could not have been deceived by any of the communications described in the Samstein and Martin complaints.

American also takes the position that it cannot guarantee the perfect accuracy of every statement that its employees make to consumers. American urges the Department to avoid a "strict liability" approach. American also states that both before and since the entry of DOT Order 2013-12-6, it has taken extensive efforts to train its employees on the proper characterization of taxes and fees.

We believe that enforcement action is warranted. Misrepresentation of carrier-imposed fees as "taxes" violates 14 CFR 399.84(a) and 49 U.S.C. § 41712, and falls squarely within the cease-and-desist provisions of DOT Order 2013-12-6.

Moreover, in Order 2013-12-6 (also involving Mr. Edelman), we rejected American's position that a practice is not deceptive if the individual complainant was not deceived. When determining if a practice is deceptive, we view the practice from the perspective of a reasonable consumer.[11] A reasonable consumer, when being told that a charge is a "tax," will believe that the charge is a tax, and not a carrier-imposed fee. We have also observed that "carriers should provide full and correct information to all of its customers, regardless of their private intent or level of sophistication." DOT Order 2013-12-6 at 7. We also are concerned that if agents make misrepresentations about taxes and fees to sophisticated consumers like Mr. Martin and Mr. Samstein, there is a substantial likelihood that they may make similar misrepresentations to less sophisticated consumers who may be unaware of the tax/fee distinction. Such consumers are also less likely to file complaints.

Conclusion

The Enforcement Office and American have reached a settlement of this matter in order to avoid litigation. As noted above, American does not concede that it misrepresented carrier-imposed fees as "taxes" in telephone exchanges or on social media. The Enforcement Office takes the position, however, that the factual allegations contained in the Martin and Samstein complaints, if established as true at an evidentiary hearing, could support such a conclusion. American consents to the issuance of an order to cease and desist from future similar violations of 14 CFR 399.84(a), 49 U.S.C. § 41712, and DOT Order 2013-12-6. The carrier also agrees to the assessment of $65,000 in compromise of civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This compromise assessment is appropriate considering the nature and extent of the violations described herein, and the size and sophistication of the carrier, and will serve the public interest. It comprises a strong deterrent against future misrepresentations of the type described herein.

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 misrepresenting the total amount of taxes and carrier-imposed surcharges for a given flight as "taxes" on its web site, and in telephone/social media conversations with consumers, American Airlines, Inc., violated 14 CFR 399.84(a), engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712, and violated the cease-and-desist provisions of DOT Order 2013-12-6;

[11] See http://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception.

3. We order American Airlines, Inc., and its successors and assignees, to cease and desist from similar violations of 14 CFR 399.84(a), 49 U.S.C. § 41712, and DOT Order 2013-12-6, as described in ordering paragraph 2, above;

4. American Airlines, Inc., is assessed $65,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2, above;

5. Payment shall be made within 30 days of the date of this order to the account of the U.S. Treasury through the Pay.gov website in accordance with the attached instructions. Failure to pay the penalty as ordered shall subject American Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure to comply with this order; and

6. We dismiss the complaints filed in Docket DOT-OST-2013-0213, DOT-OST-2014-0029, and DOT-OST-2014-0033.

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:

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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