



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

Issued by the Department of Transportation
On the Eleventh day of December, 2013

Third Party Complaint of

Benjamin Edelman

v.

American Airlines, Inc.

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

Docket OST 2013-0024

Served December 11, 2013

CONSENT ORDER AND ORDER OF DISMISSAL

On February 4, 2013, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR 302.401 against American Airlines, Inc. (American). The Complainant's primary claim is that American misrepresents various carrier-imposed surcharges as "taxes" during the booking process.¹ He 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.

This order finds that American violated 14 CFR 399.84(a) and committed unfair and deceptive trade practices in violation of 49 U.S.C. § 41712 by misrepresenting carrier-imposed surcharges as "taxes." In addition, the order directs American to cease and desist from further similar violations of the cited statute and rule, assesses a compromise civil penalty of \$60,000, and dismisses the complaint filed in this docket.

¹ The pleadings contain a variety of highly detailed charges and counter-charges. We have summarized the parties' primary contentions and omitted certain subsidiary claims, such as a dispute over disclosure of a \$25 telephone booking fee, and a dispute over alleged mathematical errors in the calculation of fares. (*See, e.g.*, Supplemental Filing, September 20, 2013, at IV and VI). Public comments have been filed in this matter; they are available for view in the docket. British Airways ("BA"), a code-share partner of American, is the subject of a separate but related complaint filed by Mr. Edelman at Docket DOT-OST-2013-0025.

The Complaint

The Complainant states that he booked flights through American on various dates from March 2011 to June 2012. He alleges that while booking these flights over the telephone, American representatives referred to all of the taxes and carrier-imposed surcharges, collectively, as “taxes.” For example, he contends that on June 26, 2012, he booked a business-class flight with an itinerary of CDG-BOS-JFK-SCL-JFK-BOS-LHR-CDG. He states that after he asked the agent to review the fare and taxes, the agent responded, “I’m showing that the fare in U.S. dollars is \$4828, and \$780.20 in taxes.” He contends that most of the \$780.20 in “taxes” were actually carrier-imposed surcharges. The Complainant further alleges that for flights booked in 2011, American’s e-ticket receipts listed all taxes and carrier-imposed surcharges under the single heading of “taxes.” He contends that in 2012 and early 2013, he placed and recorded a number of test calls to American’s Advantage Executive Platinum Desk and Around the World Desk, during which American representatives continued to refer to all taxes and carrier-imposed surcharges, collectively, as “taxes.” The Complainant alleges that these misrepresentations took place during bookings for standard flights, award travel, around-the-world flights, and reaccommodation flights.²

The Complainant raises other issues as well. For example, he alleges that when American books award travel and collects fees for passengers flying on British Airways (BA), American refers to “fuel surcharges” imposed by BA, without properly substantiating those surcharges in accordance with DOT guidance.³ He also alleges that American advertises around-the-world travel using the “oneworld” booking engine (<http://rtw.oneworld.com/>), which consistently misrepresents carrier-imposed surcharges as “taxes.”⁴

The Complainant urges the Department to open an investigation regarding these matters; to order American to refund to ticket purchasers all monies represented to ticket purchasers as “taxes” or government-imposed fees, but not actually remitted to governments; to impose civil penalties; to refer the matter to appropriate tax collection agencies; and to issue any necessary revised guidance or regulations to clarify that the practices described above are unfair and deceptive.

² “Reaccommodation flights,” according to the Complainant, occur when American cancels certain routes or downgrades certain classes of service, and then re-books passengers for travel on BA. The Complainant cites the experience of other passengers, but not himself, with respect to this issue.

³ In his companion complaint against BA, Mr. Edelman contends that BA failed to properly substantiate its fuel surcharges. *See* Docket DOT-OST-2013-0025.

⁴ The Complainant also raised this issue in a companion complaint against Cathay Pacific Airways Limited (Cathay). *See* Docket DOT-OST-2013-0027. On August 29, 2013, the Department entered an order dismissing that complaint. The Department found that a violation of 14 CFR 399.84(a) took place when Cathay’s agent, oneworld Management Company (oMC), published fare displays that failed to adequately distinguish between taxes and carrier-imposed surcharges. The Department further determined that civil penalties were not warranted under the circumstances. The oneworld website has been revised so that carrier-imposed surcharges are no longer displayed as taxes in the booking process.

Answer of American

American filed its answer on March 22, 2013. American acknowledges that its agents may have unintentionally referred to carrier-imposed surcharges as “taxes.” American contends that it is taking steps to train its agents to convey the distinction between the two. American notes that its internal computer systems and sections of its website (www.aa.com) do properly distinguish between taxes and carrier-imposed surcharges. American states that it has already revised its printed receipts to avoid classifying carrier-imposed surcharges as “taxes.”

Next, American observes that on February 21, 2012, the Office of Aviation Enforcement and Proceedings (Enforcement Office) issued guidance on the tax/surcharge issue.⁵ The Enforcement Office indicated that it would provide carriers a 60-day period (*i.e.*, until April 21, 2012, the “enforcement date”) to ensure voluntary compliance before commencing enforcement action. American contends that many incidents outlined in the complaint pre-date the enforcement date. American also argues that the Complainant could not have been deceived during the test calls, because he had no intent to actually book a flight. Finally, as a general matter, American contends that it had no intent to deceive, and that Complainant was not deceived because American always revealed the full price to be paid for each flight.

With respect to the fuel surcharges imposed by BA, American states that it is under no obligation to substantiate those charges. With respect to the oneworld website, American notes that the booking engine has been revised to place all non-fare charges under the heading of “total taxes and carrier-imposed surcharges.”⁶ Finally, American notes that there is no private right of action for individual damages under 49 U.S.C. § 41712.

Reply of Complainant

With the consent of the carrier, the Complainant filed a reply on April 5, 2013.⁷ In this reply, he argues that the enforcement date of the February 21, 2012, guidance protects only those carriers who completely cease the offending conduct by the enforcement date. He contends that if the conduct continues beyond the enforcement date, the carrier should be held responsible for the entire course of conduct. He also argues that American should be held responsible for the inaccurate statements that its agents make directly to consumers, even if accurate information may be found on American’s website. He further alleges that American makes patently false statements to consumers whenever it refers to carrier-imposed surcharges as “taxes.”

The Complainant also describes several incidents that took place after the date of his original complaint. Specifically, he alleges that during telephone conversations on February 8, 2013, and February 20, 2013, American representatives again referred to “taxes” associated with certain flights, when most of these “taxes” were in fact carrier-imposed surcharges. Moreover, he

⁵ “Additional Guidance on Airfare/Air Tour Price Advertisements,” dated February 21, 2012, available at <http://www.dot.gov/individuals/air-consumer/additional-guidance-airfare-and-air-tour-price-advertisements>.

⁶ See Letter of Stephen M. User, Vice President, oneworld Management Co., Inc., May 9, 2013, Docket DOT-OST-2013-0027.

⁷ Agreed Motion, March 26, 2013, Docket DOT-OST-2013-0024, granted by email dated April 1, 2013.

alleges that on April 3, 2013, after he placed a reservation on hold at www.aa.com, he received an electronic statement that placed all of the flight's taxes and fees under a heading marked "taxes."

Response of American

Pursuant to the Agreed Motion of March 26, 2013, American filed a responsive pleading on April 19, 2013. American contends that the Complainant acted disingenuously because he posed leading questions to American's agents, and was not actually confused about the distinction between taxes and surcharges. American acknowledges that the reservation document that was generated in the Complainant's transaction of April 3, 2013, was inaccurate. American states that it will re-format that document to provide an accurate breakdown of taxes and surcharges. Finally, American emphasizes that any inaccurate printed or verbal statements were unintentional and did not create any confusion with respect to the full and final price to be paid by the consumer.

Supplemental Filing by Complainant

On September 20, 2013, with the consent of American and the Department, the Complainant submitted supplemental evidence supporting his claims. The Complainant alleged that in the summer of 2013, in three separate transactions described below, American telephone representatives continued to refer to carrier-imposed surcharges as "taxes." First, on June 2, 2013, a telephone agent from American's "Around the World" Desk quoted a fare of \$13,808.00, with "taxes" of \$1,087.37. Next, on June 29, 2013, a telephone agent from American's Executive Platinum Desk quoted a base fare of \$1,435.00, and "taxes" of \$560.40. Finally, on August 31, 2013, a telephone agent from American's Executive Platinum Desk quoted a one-way fare that could be obtained for 62,500 miles, with a "tax" of \$438.20. The Complainant further alleges that in each case, most of the "taxes" were actually carrier-imposed surcharges. According to the Complainant, this evidence demonstrates that action by the Department continues to be necessary, and that American has not corrected the problem through training.

The Complainant also alleges that American's website misleadingly places carrier-imposed surcharges under the heading of "taxes and fees," while leading consumers to believe that this heading includes only *bona fide* government-imposed taxes and fees. Specifically, he states that when he recently booked an international flight, American's website displayed a fare of \$6,859.20, and "taxes and fees" of \$657.62. The Complainant alleges that when he clicked on a link explaining these items, a popup window appeared with the statement that international fares included the base fare and carrier-imposed surcharges. The popup further explained that "additional government-imposed taxes and fees" included a September 11th security fee of \$2.50, an airport passenger facility charge of up to \$18, and other government taxes and fees of up to \$240.⁸ The Complainant concludes that most of the \$657.62 listed under the heading of "taxes and fees" were actually carrier-imposed surcharges.

⁸ Supplemental Filing, September 20, 2013, Attachment 2.

Supplemental Response by American

American filed a supplemental response on October 17, 2013. First, American acknowledges that its agents continued to describe taxes and carrier-imposed surcharges collectively as “taxes” during telephone bookings. American describes these acts as inadvertent mistakes. American contends that it has already provided additional training to its agents on this matter, but admits that further training is clearly necessary. American states that it provides its agents with all of the information necessary to provide a full and accurate breakdown of taxes and surcharges, upon request. American repeats that it has no intent to deceive, and that its customers are not confused about the full and final price to be paid for air transportation.

Next, American acknowledges that the popup displays provided by Mr. Edelman did not clearly distinguish between taxes and carrier-imposed surcharges, as required by the February 2012 guidance. American has also revised its website to place carrier-imposed fees under the heading of “taxes and carrier-imposed fees,” rather than “taxes and fees.” American states that these revisions to the website will eliminate any confusion over these elements.

Applicable Law

Unfair or deceptive practices and unfair methods of competition are explicitly prohibited under 49 U.S.C. § 41712. The Department’s “full fare” advertising rule, 14 CFR 399.84(a), provides in relevant part that the first price quote for air transportation must state the entire price to be paid by the customer, including all taxes, fees, and carrier surcharges. Charges included within that total price may be stated separately, but those charges must, *inter alia*, accurately reflect the actual costs of the services covered, and may not otherwise be false or misleading.

On February 21, 2012, the Enforcement Office issued guidance on the issue of labeling taxes and surcharges. The guidance states that it is an unfair and deceptive practice to include carrier-imposed surcharges and other fees not imposed by a government under the label of “taxes,” or under the label “taxes and fees.” The Enforcement Office reasons 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.”⁹ Carriers may, if they choose, use language such as “taxes and carrier-imposed fees” to collectively describe the charges that are separate from the base fare.

The Enforcement Office is aware that carriers sometimes add substantial fees and/or “fuel surcharges” to their ticket offerings. Carriers must fairly disclose those fees if they choose to separately state them in addition to including them in the total price, and those fees must also accurately reflect the actual cost associated with the fee. For example, a “fuel surcharge” must be an accurate reflection of the fuel cost over some reasonable baseline for an individual passenger for that trip. The guidance discussed above also addressed this issue.

The Enforcement Office considers practices that do not comply with this guidance to be violations of 14 CFR 399.84(a) and to be unfair and deceptive practices in violation of 49 U.S.C.

⁹ See footnote 5, p.3.

§ 41712. The Enforcement Office allowed carriers a window of 60 days (*i.e.* until April 21, 2012) to voluntarily comply with the guidance before instituting enforcement action.

Analysis and Decision

The Enforcement Office has considered the arguments in this proceeding and believes that American violated 14 CFR 399.84(a). 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. American violated this rule by misrepresenting the total amount of taxes and carrier-imposed surcharges on certain flights as being “taxes.” American does not dispute that its agents referred to the total amount of taxes and carrier-imposed fees as “taxes” on at least five occasions between June 2012 and February 2013, and on three additional occasions in the summer of 2013. American also admits that in April 2013, it issued a reservation statement to the Complainant that incorrectly placed all of the taxes and carrier-imposed surcharges under the single label of “taxes.” Finally, American acknowledges that as late as October 2013, certain popups and links on its site placed carrier-imposed fees under the heading of “taxes and fees,” in violation of the February 2012 guidance. By violating section 399.84(a), American also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.¹⁰

We are not persuaded by American’s arguments that any violations were harmless and that formal enforcement action is unwarranted. First, American contends that it should not be responsible for misstatements that occurred before the April 21, 2012, enforcement date. We need not decide that issue, because the record establishes that American representatives repeatedly made such misstatements after April 21, 2012.

Second, American contended in its initial answer that any misstatements by its telephone representatives were relatively harmless because consumers could find a proper breakdown of taxes and surcharges on American’s website. However, Mr. Edelman provided supplemental evidence that certain links and popups on the website were also misleading on this issue, and American has acknowledged those deficiencies. Even assuming that consumers could always find accurate information on the website, we agree with the Complainant that consumers who choose not to use the website should be able to book a flight through American’s live representatives and receive truthful and accurate information during that process.

Third, we cannot agree with American that there is no consumer confusion in this case because the Complainant was never deceived about the total price to be paid. While deception regarding the total price to be paid would be a significantly more serious matter, the purpose of the February 2012 guidance is to avoid misleading consumers into believing that certain fees are “taxes” (over which the parties have no control), when they are actually carrier-imposed

¹⁰ In this order, we express no opinion on the extent to which American must independently justify the fuel surcharges imposed by BA. We note that BA’s fuel surcharges are the focus of the complaint against that carrier docketed at DOT-OST-2013-0025, and the question of justifying the fuel surcharge is better handled there. We need not address Mr. Edelman’s allegations regarding the “oneworld” booking engine, because those claims have been adequately addressed in Docket DOT-OST-2013-0027.

surcharges (which the consumer may be able to avoid by choosing another carrier).¹¹ This concern is related to, but distinct from, the concerns animating the rule that the quoted fare must be the total price.

Fourth, we are not persuaded by American's defense that the Complainant was a sophisticated consumer who asked leading questions and who occasionally did not intend to book flights. In our view, carriers should provide full and correct information to all of its customers, regardless of their private intent or level of sophistication. Finally, we need not decide whether American acted with intent to deceive, because intent is not relevant to the question of whether a violation has taken place.

We believe that enforcement action is warranted. The Enforcement Office and American have reached a settlement of this matter in order to avoid litigation. American consents to the issuance of an order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a). The carrier also agrees to the assessment of \$60,000 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 American Airlines, Inc. engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 and 14 CFR 399.84(a) by providing consumers verbal and written statements that refer to the total amount of taxes and carrier-imposed surcharges for a given flight as "taxes";
3. We order American Airlines, Inc., and its successors and assignees, to cease and desist from similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712 as described in ordering paragraph 2, above;
4. American Airlines, Inc. is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2, above;
5. Payment shall be made 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

¹¹ We note that carriers and their association have emphasized the importance of highlighting taxes to consumers. To the extent carriers do so, they should do so accurately.

Debt Collection Act, and to possible additional enforcement action for failure to comply with this order; and

6. We dismiss the complaint filed in Docket DOT-OST-2013-0024.

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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