



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

**Issued by the Department of Transportation
On the Twenty-First day of April, 2014**

**Third Party Complaint of
Benjamin Edelman**

Docket OST 2013-0216

**SC Compania Națională de Transporturi
Aeriene Române TAROM S.A.**

Served April 21, 2014

ORDER OF DISMISSAL

On December 16, 2013, Benjamin Edelman (Petitioner) filed a third party complaint against SC Compania Națională de Transporturi Aeriene Române TAROM S.A. (TAROM) alleging that TAROM is engaging in an unfair and deceptive practice by categorizing a carrier-imposed surcharge as a government tax on its website in violation of the Department of Transportation's (Department) guidance on airfare advertising and in violation of the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. Petitioner requests that the Department find that TAROM is engaging in an unfair and deceptive practice and order TAROM to refund ticket purchasers all monies represented as "tax" and order TAROM to pay a civil fine. Although not specifically requested in Petitioner's pleading, we are treating Petitioner's filing as a formal complaint under 14 CFR 302.404. We are dismissing the complaint for the reasons stated below. This order is being issued under the authority of 14 CFR 302.406(a)(2).

Applicable Law

Section 41712 of Title 49 of the U.S. Code prohibits an air carrier, foreign air carrier, or ticket agent from engaging in an unfair or deceptive practice or an unfair method of competition. Pursuant to that authority and to ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, the Department issued regulation 14 CFR 399.84(a). Section 399.84(a) requires that advertisements for air transportation state the entire price to be paid by the consumer including all government taxes and fees and carrier-imposed surcharges. Although such charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be

displayed as prominently as the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per-passenger basis that accurately reflects the cost of the item covered by the charge.

The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) issued guidance for carriers who choose to provide supplementary information regarding the existence and amount of taxes, government fees, and carrier-imposed fees. Carriers should ensure that, if grouped together, they are not described under a general rubric such as "taxes and fees" and must clearly indicate that the amount includes both taxes and government fees, and carrier-imposed fees.¹ Otherwise, consumers may not be aware that the total price to be paid includes a carrier-imposed fee and may believe that the taxes and government fees associated with their airfare are higher than they actually are. Failure to accurately identify carrier-imposed fees constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

The Department's fare advertising regulation covers websites selling air transportation marketed to United States consumers. More specifically, the rule applies to advertisements of foreign carriers, among others, that are marketed to United States consumers for air transportation within, to, or from the United States.² The Enforcement Office has issued detailed guidance regarding the applicability of the full-fare rule. To determine whether a particular advertisement or website is marketed to United States consumers, the Enforcement Office looks to various factors.³

Petitioner's Complaint

On December 16, 2013, Petitioner filed a complaint against TAROM alleging that a consumer who searches for airfare on TAROM's website, www.tarom.ro, is deceived into believing that the amount of taxes due is greater than the actual amount of taxes due because TAROM included its own carrier-imposed surcharge under a label of "taxes." Petitioner attached screenshots taken from a webpage that displayed a fare quote for flights from John F. Kennedy International Airport in New York to Bucharest, Romania. These screenshots showed a "flight details" page that listed a total fare that included a base fare and taxes. Petitioner alleges that the screenshots were from TAROM's website,

¹ *Additional Guidance on Airfare/Air Tour Price Advertisements* (Issued February 21, 2012), available at <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

² *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, Section IX, Questions 1 and 4, (Last updated on June 15, 2012), available at <https://www.dot.gov/airconsumer/aviation-rules>.

³ Those factors include but are not limited to whether the fares are displayed in United States dollars, whether sales can be made to persons with addresses or telephone numbers in the United States, whether the website is in English, whether the seller uses banner advertisements or highlights special deals for flights to or from the United States, and whether the seller has an option on its website that differentiates sites or pages designed for United States or other consumers. See *Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections*, Section IX, Questions 1 and 4, (Last updated on June 15, 2012), available at <https://www.dot.gov/airconsumer/aviation-rules>.

www.tarom.ro, and argues that this tax amount is not accurate because it also includes a carrier-imposed surcharge. Petitioner asks the Department to investigate the website and find that TAROM is engaging in an unfair and deceptive practice.

TAROM's Answer

On January 17, 2014, TAROM filed an answer to Petitioner's complaint⁴ in which TAROM argued that its website is compliant with European laws governing price advertisements. Notwithstanding this assertion, TAROM stated that it had quickly revised its website to comply with the Department's rules. TAROM subsequently provided emails from its website technology provider that show that after receiving the complaint it updated the label of "taxes" on its website.

Disposition and Analysis

We have carefully considered the complaint in Docket 2013-0216, TAROM's answer, and conducted an independent investigation of TAROM's website and have decided to dismiss the complaint for lack of jurisdiction. After reviewing the screenshots attached to Petitioner's complaint and conducting an independent review of the carrier's website, the Department has decided that TAROM's website, www.tarom.ro, is not marketed to United States consumers. The Department notes that after receiving the complaint, TAROM voluntarily updated its website to comply with Departmental requirements concerning the display of taxes and fees even though the website is not covered.

ACCORDINGLY, pursuant to the authority delegated under 49 CFR Part 1, I dismiss the complaint of Benjamin Edelman against SC Compania Națională de Transporturi Aeriene Române TAROM S.A. in Docket OST 2013 -0216. Pursuant to 14 CFR 302.406(b) this order shall become effective as a final order of the Department thirty days after service of this order.

By:

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An electronic version of this document is available at
www.regulations.gov

⁴ Pursuant to 14 CFR 302.405(a) TAROM's answer was due within fifteen days of the filing of the complaint. The Department granted an extension to TAROM to file the answer by January 20, 2014. TAROM served the petitioner and the Department before that date, but due to a clerical error the answer was not posted on www.regulations.gov until April 9, 2014.