



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

Issued by the Department of Transportation
on the 5th day of November

Third Party Complaint of

Benjamin Edelman

v.

Middle East Airlines Airliban

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

Served: November 5, 2015

Docket DOT-OST-2013-0215

CONSENT ORDER AND ORDER OF DISMISSAL

On December 16, 2013, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR § 302.404 against Middle East Airlines Airliban (“Middle East Airlines” or “MEA”). The Complainant alleges that Middle East Airlines violated the Department’s full-fare rule by misrepresenting carrier-imposed surcharges as “taxes” during the online booking process. He contends that this violates 14 CFR § 399.84(a) and constitutes an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

This order finds that Middle East Airlines violated 14 CFR § 399.84(a) and committed unfair and deceptive trade practices in violation of 49 U.S.C. § 41712 by including a carrier-imposed fee within an amount described as “taxes” on its U.S.-directed website. In addition, the order directs Middle East Airlines to cease and desist from further similar violations of the cited statute and rule, assesses a compromise civil penalty of \$10,000, and dismisses the complaint filed in this docket.

The Complaint

The Complainant states that on December 14, 2013, he used Middle East Airline’s website, www.mea.com.lb, to request coach-class travel from New York, New York, to Beirut, Lebanon. He provided screenshots indicating that the site displayed a price of \$663.00 plus “taxes” of \$734.84 for a total cost of \$1,397.84. He asserts that there is no “tax” of \$734.84 for his ticket.

He alleges that Middle East Airlines is mischaracterizing a carrier-imposed fee or surcharge as a “tax” in violation of the Department’s regulations. The Complainant asks the Department to investigate these practices, to order Middle East Airlines to issue refunds to ticket purchasers, to impose civil penalties, and to refer this matter to appropriate U.S. and foreign tax authorities.

Answer of Middle East Airlines

Middle East Airlines filed its answer on January 30, 2014. Middle East Airlines contends that, upon receiving the complaint, it took immediate corrective action. Middle East Airlines contacted its third-party website provider and instructed it to modify the carrier’s online reservation system to comply with the Department’s regulations. Middle East Airlines rendered its online reservation system inoperable one day after receiving the complaint, and launched a compliant website two weeks later. Middle East Airlines argued that enforcement action is not warranted in this case because any mischaracterization of a tax, fee, or surcharge was inadvertent, and likely the result of ongoing technical upgrades to their website. In response to a request for additional information from the Department, Middle East Airlines further argued that the Department lacks jurisdiction for enforcement action because MEA’s website is not “marketed to U.S. consumers.”¹

Analysis

The Department’s full-fare advertising rule, 14 CFR § 399.84, applies to ticket agents that market to U.S. consumers for air travel to or from the United States. MEA asserted that the Department lacked jurisdiction to enforce section 399.84 against it because MEA does not have a foreign air carrier permit² issued by the Department, nor is it a ticket agent, because a foreign air carrier is excluded from the definition of ticket agent.³ It is true that MEA does not transport passengers or property by aircraft as a common carrier for compensation between a place in the United States and a place outside the United States, nor does MEA hold economic authority from the Department to engage in foreign air transportation. Therefore, MEA is not a “foreign air carrier” as defined by statute.⁴ However, MEA is a ticket agent because it “sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation” and is thus subject to section 399.84.⁵

¹ The Department’s Office of Aviation Enforcement and Proceedings (“Enforcement Office”) has stated in guidance that 14 CFR § 399.84 does not apply to advertising “that takes place solely outside the United States and is not directed at consumers in the U.S.” *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>.

² *See* 49 U.S.C. § 41301.

³ *See* 49 U.S.C. § 40102(a)(45).

⁴ *Id.* at § 40102(a)(21).

⁵ *Supra*, note 3.

With regard to the marketing of fares via the internet, the Enforcement Office looks to a number of factors in determining whether a site is marketed to U.S. consumers, including, but not limited to, whether the site is in English, whether the displayed price is in U.S. dollars, whether the seller uses banner advertisements that highlight special deals to or from the United States, and whether the seller offers a site that differentiates between U.S. and other consumers.⁶

Here, our independent review of Middle East Airlines' website indicates that: (1) the default language for MEA's website when accessed in the United States is English; (2) the displayed prices are in U.S. dollars; (3) MEA has nine airports in the United States for a consumer to select as the departure city for a flight; (4) MEA maintains two offices in the United States (New York and Los Angeles), with local telephone numbers for each office which are listed on MEA's website; and (5) MEA lists eight U.S. cities as destinations on its website's route map. The Department's full fare rules are applicable to MEA and since Middle East Airlines' website is "marketed toward U.S. consumers," the website must comply with § 399.84.

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 its full-fare advertising rule in 14 CFR § 399.84(a). Section 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. The rule permits charges included within that total price to be stated separately, but the separate statement may not be false or misleading, and "must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge."

On February 21, 2012, the Enforcement Office issued guidance on describing taxes and surcharges in fare advertisements. The guidance explains that it is an unfair and deceptive practice in violation of section 41712 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" as 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."⁷ Moreover, such a practice may mislead consumers into believing that a carrier's fare is lower than fares available through other sales channels. Practices that do not comply with 14 CFR § 399.84(a) also constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

The Complainant presented evidence that on December 13, 2013, MEA displayed on its U.S. website a base fare of \$663.00, plus "taxes" of \$734.84, for a total of \$1,397.84. Upon further

⁶ See *SC Compania Națională de Transporturi Aeriene Române (TAROM) S.A.*, DOT Order 2014-4-18 (April 21, 2014); see also *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>. See also *Cathay Pacific Airways Limited*, DOT Order 2014-10-14 (October 17, 2014).

⁷ "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>.

investigation, the carrier admitted that the majority of the “taxes” amount consisted of carrier-imposed charges. We conclude that this display violated 14 CFR § 399.84(a) and 49 U.S.C. § 41712.

Middle East Airlines changed its method of displaying taxes and fees on its U.S. site in January 2014.⁸ Although Middle East Airlines was unable to determine the exact date when it began displaying its fares in the manner described in the complaint, it does not dispute that its previous method of displaying its fares was not in compliance with section 399.84 or 49 U.S.C. § 41712. Middle East Airline acknowledges that a number of tickets were sold to U.S. consumers through its website during this period.

Mitigation

In mitigation, Middle East Airlines states that it has cooperated with the Department fully during the course of its investigation, does not currently operate to the United States, nor does it hold out service in its own name via codeshare. Middle East Airlines states that U.S. consumers were never intentionally targeted by its website and the only service to the U.S. available on its website is provided via traditional, arms-length interline agreements. Middle East Airlines further notes that although it does sell interline tickets via its website it disputes the Department’s assertion of jurisdiction and, specifically, the Department’s classification of Middle East Airlines as a ticket agent in this case. Middle East Airlines nevertheless has complied with the Department’s full fare rule in the period since this issue was brought to its attention.

Decision

We believe that enforcement action is warranted. The Enforcement Office and Middle East Airlines have reached a settlement in this matter in order to avoid litigation. Without admitting or denying the violations found in this order, MEA consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR § 399.84. The carrier also agrees to the assessment of \$10,000 in compromise of civil penalties otherwise payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations. It comprises a strong deterrent against future similar misrepresentations, and will serve the public interest.

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

⁸ Currently, when a U.S. consumer books a flight on the U.S. Site, the display shows a total price, which is then divided into two components: (1) “flights” and (2) “taxes and carrier filed surcharges.” The second component leads to a clickable hyperlink with a pop-up display further breaking down the “charges to the airlines” and “government, authority and airport charges.” This type of display is permissible. *See American Airlines, Inc.*, DOT Order 2013-12-6 (December 11, 2013).

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 Middle East Airlines Airliban engaged in an unfair and deceptive trade practice in violation of 14 CFR § 399.84 by including carrier-imposed surcharges within an amount described as “taxes” on its U.S.-directed website;
3. We further find that Middle East Airlines Airliban engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 by including carrier-imposed surcharges within an amount described as “taxes” on its U.S.-directed website;
4. We order Middle East Airlines Airliban, and its successors and assignees, to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR § 399.84 as described in ordering paragraphs 2 and 3, above;
5. Middle East Airlines Airliban is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of that amount, \$5,000 shall be due and payable within 30 days after the service date of this order. The remaining amount, \$5,000, shall become due and payable if, within one year of the date of issuance of this order, Middle East Airlines Airliban violates the order’s cease and desist provisions or fails to comply with the order’s payment provision, in which case Middle East Airlines Airliban may be subject to additional enforcement action for violation of this order;
6. 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 Middle East Airlines Airliban to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
7. We dismiss the complaint filed in Docket DOT-OST-2013-0215.

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 WORKIE
Assistant General Counsel for
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