



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

Issued by the Department of Transportation  
on the 6<sup>th</sup> day of February, 2015

**Third Party Complaint of**

**Benjamin Edelman**

**v.**

**Air Europa Lineas Aereas, S.A.U.**

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

**Docket DOT-OST-2013-0214**

**Served February 6, 2015**

**CONSENT ORDER AND ORDER OF DISMISSAL**

On December 16, 2013, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR 302.401 against Air Europa Lineas Aereas, S.A.U. (Air Europa). The Complainant alleges that Air Europa 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 Air Europa 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 Air Europa to cease and desist from further similar violations of the cited statute and rule, assesses a compromise civil penalty of \$100,000, and dismisses the complaint filed in this docket.

## **The Complaint**

The Complainant states that on December 13, 2013, he used Air Europa's website, [www.aireuropa.com](http://www.aireuropa.com), to request coach-class travel from New York City to Madrid, Spain. He provided screenshots indicating that the site displayed a price of €323 plus "taxes" of €430.63, plus a "service fee." He asserts that the great majority of the amount listed as "taxes" consisted of carrier-imposed surcharges. He also alleges that he could not determine the amount of the service fee (€25 for an electronic ticket) until he was several pages into the booking process. The Complainant asks the Department to investigate these practices, to order Air Europa 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 Air Europa**

Air Europa filed its answer on January 14, 2014. Air Europa contends that the Complainant accessed the portion of Air Europa's website that is directed to consumers in Spain (the "Spain Site"), not the portion that is directed to consumers in the United States (the "U.S. Site"). Specifically, Air Europa points out that the Complainant's screenshots carry the designation "España – EN – English" (i.e., the English-language version of the Spain Site). Air Europa also notes that the fare quoted to the Complainant was expressed in Euros, and that the reservations telephone number displayed on the screen is in Spain.<sup>1</sup> Air Europa argues that the Department's jurisdiction does not extend to websites that are marketed to consumers outside the United States. Air Europa also contends that the Office of Aviation Enforcement and Proceedings (Enforcement Office) has stated in published 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.

## **Reply of Complainant**

The Complainant filed a reply on January 30, 2014. The Complainant does not dispute that the screenshots he provided are from the Spain Site. He argues, however, that the Department should exercise jurisdiction over this matter for several reasons. He contends that U.S. consumers accessing Air Europa's site from outside the United States are silently and automatically directed to the Spain Site, and that such consumers may not notice the difference between this site and the U.S. Site.<sup>2</sup> He asserts additionally that the plain language of section 399.84 is not limited to advertisements directed at U.S. consumers.

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<sup>1</sup> The U.S. Site carries the designation "USA – EN – English"; the fares are quoted in U.S. dollars, and the reservation telephone number is in the United States. Air Europa notes that the Spain Site is available in the Spanish, Catalan, or English language at the user's option, whereas the U.S. Site is available in English only.

<sup>2</sup> The Complainant states that he took the screenshots while travelling in Singapore, and that he was not aware that he was on the Spain Site until Air Europa filed its answer. He does not indicate whether he had to manually select English as an option when he accessed the Spain Site.

The Complainant also raised allegations concerning the U.S. Site. First, he attached a screenshot that was prepared on April 4, 2013, showing a fare from New York to Paris. This screenshot quotes a fare of \$563.00 plus “taxes” of \$565.14, for a total of \$1,228.14. As with his original allegation, the Complainant asserts that the great majority of the “taxes” consisted of carrier-imposed surcharges. The Complainant admits that these types of misrepresentations no longer appear on the U.S. Site, but he alleges that they may have been present as late as December 2013.

### **Answer of Air Europa**

Air Europa sought and was granted permission to file an answer to the reply. In its February 10, 2014, answer, Air Europa primarily asserts that no useful purpose would be served by investigating a website that is currently compliant, even assuming it was noncompliant in the past. Air Europa also contends that the April 2013 screenshot from the U.S. Site was from the “review” step of the booking process, and therefore may not have been an “advertisement or solicitation” as contemplated by 14 CFR 399.84.

### **Analysis and Decision – Spain Site**

The Department’s full-fare advertising regulation covers websites selling air transportation marketed to U.S. consumers. More specifically, the rule applies to advertisements of foreign carriers, among others, that are marketed to U.S. consumers for air transportation within, to, or from the United States.<sup>3</sup> The Enforcement Office has issued detailed guidance regarding the applicability of the full-fare rule.<sup>4</sup> The Enforcement Office has stated that it does not intend to apply the rule to advertising that takes place solely outside the U.S. and is not directed at consumers in the U.S. The Enforcement Office looks to a number of factors in determining whether a site is marketed to U.S. consumers, including 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. Here, our independent review of Air Europa’s Spain Site indicates that: (1) the consumer has the option of selecting Spanish, Catalan, or English; (2) the displayed prices are in Euros; (3) special deals to and from the United States are not highlighted; (4) the reservation telephone number is directed to Spain; and (5) a separate website exists for U.S. consumers. We conclude, and the parties do not dispute, that Air Europa’s Spain Site is not marketed to U.S. consumers. Therefore, we dismiss the complaint to the extent that it relates to the Spain Site.<sup>5</sup>

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<sup>3</sup> *Cathay Pacific Airways Limited*, DOT Order 2014-10-14 (October 17, 2014).

<sup>4</sup> *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>.

<sup>5</sup> We disagree with the Complainant’s suggestion that the Department should take action with respect to the Spain Site because Air Europa’s “false statement of ‘tax’ is also a breach of contract with consumers[.]” Reply at 5, ¶ 13. We note that a passenger may in certain circumstances have a private cause of action against an airline in a court of

### Analysis and Decision – U.S. Site

Under 49 U.S.C. § 41712, an air carrier, foreign air carrier, or ticket agent may not engage 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) 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.

On February 21, 2012, the Enforcement Office issued guidance on describing taxes and surcharges in fare advertisements.<sup>6</sup> 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.” Moreover, such a practice may mislead consumers into believing that a carrier’s fare is lower than fares available through other sales channels. Carriers may, if they choose, use language such as “taxes and carrier-imposed fees” to collectively describe charges that they elect to describe separately from the base fare.<sup>7</sup> The Enforcement Office considers the practice of including carrier-imposed fees under the label of taxes to be a violation of 14 CFR 399.84(a) and to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712. As a matter of enforcement policy, the office allowed those subject to the full fare advertising rule and 49 U.S.C. § 41712 until April 21, 2012, to comply with the rule and statute before instituting enforcement action.

The Complainant presented evidence that on April 4, 2013, Air Europa displayed on the U.S. Site a base fare of \$563.00, plus “taxes” of \$565.14, for a total of \$1,228.14. It is undisputed that the majority of the “taxes” amount consisted of carrier-imposed charges. We conclude that this display violated 14 CFR 399.84 and 49 U.S.C. § 41712.<sup>8</sup>

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competent jurisdiction for breach of contract. See *Northwest, Inc. v. Ginsberg*, \_\_ U.S. \_\_, 134 S.Ct. 1422 (2014); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

<sup>6</sup> “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>.

<sup>7</sup> *Ibid.* See also *American Airlines, Inc.*, DOT Order 2013-12-6 (December 11, 2013).

<sup>8</sup> We are not persuaded by Air Europa’s argument that statements regarding taxes and fees are not advertising or solicitation within the meaning of the first sentence of section 399.84(a), and therefore are outside the scope of the regulation, if they take place during the “review” step of the booking process. The second sentence of section 399.84(a) states, in relevant part, that charges included within the single total price listed (such as taxes) may be stated separately, but they must not be false or misleading. In our view, a false statement regarding taxes and fees would fall within the ambit of section 399.84 if it took place at any time during the booking process. See *Airtrade International, Inc. v. Vayama*, DOT Order 2014-1-9 (ticket agent improperly included its own fee under the label of “taxes and fees” on a purchase review screen); *Societe Air France*, DOT Order 2012-11-1 (carrier improperly placed fuel surcharges under the label of “taxes” on a summary page appearing after itinerary was selected). Airlines are also prohibited from making misrepresentations by 49 U.S.C. § 41712.

Air Europa changed its method of displaying taxes and fees on the U.S. Site on January 13, 2014.<sup>9</sup> Air Europa does not dispute that its method of displaying taxes and fees was periodically noncompliant from the compliance deadline of April 21, 2012, until January 13, 2014.

We believe that enforcement action is warranted. The Enforcement Office and Air Europa have reached a settlement in this matter in order to avoid litigation. Without admitting or denying the violations found in this order, Air Europa 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(a). The carrier also agrees to the assessment of \$100,000 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.

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 Air Europa Lineas Aereas, S.A.U., engaged in an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 and 14 CFR 399.84(a) by including a carrier-imposed fee within an amount described as “taxes” on its U.S.-directed website;
3. We order Air Europa Lineas Aereas, S.A.U., and its successors and assignees, to cease and desist from similar violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a) as described in ordering paragraph 2, above;
4. Air Europa Lineas Aereas, S.A.U., is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2, above. Of this total amount, \$50,000 shall be due and payable in five installments. The first installment of \$10,000 shall be due and payable within 30 days after the service date of this order. A second installment of \$10,000 shall be due and payable on April 1, 2015. A third installment of \$10,000 shall be due and payable on May 1, 2015. A fourth installment of \$10,000 shall be due and payable on June 1, 2015. The final installment of \$10,000 shall be due and payable on July 1, 2015. The remaining portion of the assessed civil penalty shall become immediately due and payable if, within one year of the service date of this order, Air Europa Lineas Aereas, S.A.U., violates this order’s cease and desist or payment provision;

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<sup>9</sup> 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) the base fare and (2) “taxes and carrier-imposed fees.” This type of display is permissible. *American Airlines, Inc.*, DOT Order 2013-12-6 (December 11, 2013).

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 Air Europa Lineas Aereas, S.A.U., 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

6. We dismiss the complaint filed in Docket DOT-OST-2013-0214.

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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