



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

Issued by the Department of Transportation
on the 4th day of March, 2016

Third Party Complaint of

Benjamin Edelman

v.

British Airways PLC

**Violations of 49 U.S.C. § 41712,
14 C.F.R. § 399.84, Order 2014-9-2, and
Order 2012-10-1**

Docket DOT-OST-2015-0004

Served

CONSENT ORDER AND ORDER OF DISMISSAL

On January 13, 2015, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 CFR 302.404 against British Airways PLC. The Complainant alleges that British Airways violated the Department's full-fare advertising rule by quoting taxes, fees, and carrier charges that did not reflect the entire price to be paid by the consumer. 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 British Airways violated 14 CFR 399.84(a), Order 2014-9-2, and Order 2012-10-1, and committed unfair and deceptive trade practices in violation of 49 U.S.C. § 41712 by inaccurately quoting taxes, fees, and carrier charges on its U.S. website. In addition, the order directs British Airways to cease and desist from further similar violations of the cited statute, rule, and orders, assesses a civil penalty of \$40,000, and dismisses the complaint filed in this docket.

The Complaint

The Complainant alleges that on January 9, 2015, he used British Airways' U.S. website to find one-way award itineraries on several flights from U.S. cities. He alleges that when he selected a Philadelphia to Munich route, operated by US Airways, the British Airways site quoted a total

price, including all taxes, fees, and carrier charges, of 25000 Avios¹ points and \$23. According to the Complainant, when he clicked “Continue,” the following page quoted a dollar figure of \$285.80, instead of the \$23 originally quoted. To support the allegations, the Complainant offers screen images of British Airways’ website as an attachment to his Complaint. He also offers digital video files to support his claim.

The Complainant further alleges similar facts and provides screen images and video with respect to a number of other itineraries, all of which include US Airways as an operating carrier.

Answer of British Airways

British Airways filed an answer to the Complaint on January 28, 2015. The carrier states that the Complaint involved circumstances that were caused by an inadvertent programming error affecting redemption ticket sales on a limited number of routes. British Airways also states that it became aware of the error prior to Mr. Edelman’s complaint by way of a consumer complaint on the issue on January 12, 2015. In response to that consumer complaint, the carrier took steps to identify and resolve the issue, which included coordination with the carrier’s website technical personnel. British Airways states that the source of the problem was identified on January 13, and a solution was tested and implemented on January 14. The carrier adds that the website was functioning properly by the morning of January 15.

British Airways requested that the Department dismiss the Complaint and raised five affirmative defenses: 1) the Complaint fails to state a claim upon which relief may be granted; 2) the Complainant lacks a private right of action under 49 U.S.C. § 41712; 3) the Complainant has not suffered any harm; 4) the Complainant lacks standing; and 5) the Complaint is moot.²

In response to the Enforcement Office’s inquiries, British Airways contends that there is no basis for finding a violation of section 41712 under circumstances where the carrier rectifies the mistake by refunding the difference between the mistaken fare and the actual fare. The carrier also argues that it never advertised or otherwise promoted the \$23 amount referenced in the Complaint, and that the erroneous information was only available to its frequent flyer members who must first log in to the website. With regard to the duration of the error, British Airways states that it is not certain when the programming error originally occurred and speculates that the error could have arisen as early as December 2013, but would not have manifested itself until British Airways and US Airways entered into a codeshare arrangement in spring 2014.

Analysis and Conclusions

As a foreign air carrier, British Airways is subject to the advertising requirements of Part 399 of the Department’s rules. To ensure that consumers are not deceived and are given accurate and

¹ Avios is the reward currency offered by British Airways’ Executive Club, British Airways’ frequent flyer program.

² Pursuant to 49 U.S.C. § 41712, the Secretary may, on his own initiative, investigate and decide whether a foreign air carrier has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. As such, British Airways’ affirmative defenses regarding the standing and rights of an individual consumer are not relevant to our analysis.

complete fare information on which to base their airline travel plans, 14 CFR 399.84 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 charges. 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. Advertising a fare that is not available violates section 399.84 and constitutes an unfair and deceptive trade practice under 49 U.S.C. § 41712.

The Complainant alleged and British Airways acknowledges that it displayed on its U.S. website taxes, fees, and carrier charges that did not accurately reflect the entire price to be paid by the consumer. Specifically, British Airways displayed erroneous information for flights operated by US Airways between the U.S. and Europe as a result of a programming error. This display violated 14 CFR 399.84(a), 49 U.S.C. § 41712, Order 2014-9-2, and Order 2012-10-1.

Mitigation

In mitigation, British Airways states that the circumstances that gave rise to the Complaint were caused by an inadvertent programming error that affected redemption ticket sales on a limited number of routes available on ba.com involving sectors operated by US Airways. British Airways states that it proceeded as expeditiously as possible to remedy the situation as soon as it became aware of the problem and that it had already identified the underlying issue and developed corrective measures before the Complaint was filed.

According to British Airways, the incorrect amount never appeared in connection with any fare displayed on the British Airways homepage, on any ba.com or other website advertisement, on any print, television, or radio advertisement, or any other advertisement of any kind. The web pages displaying the erroneous information were available only to members of British Airways' frequent flyer program who logged into ba.com.

The Complainant does not assert that he purchased a redemption ticket in reliance on an incorrect disclosure, and the carrier does not believe he was adversely affected. British Airways states that it is aware of only one consumer complaint asserting purchase of a redemption ticket in reliance on the incorrect amount resulting from the programming error. The carrier states that it believes that individual was a sophisticated traveler who was likely aware that the ticket purchase resulted from a mistake. Nonetheless, British Airways confirms that it immediately refunded that individual's credit card for the difference between the mistaken and the correct amount.

British Airways further submits that the programming error which led to the incident at issue here is analogous to the type of fare mistake situation for which the Enforcement Office has not penalized carriers when the carrier honors the incorrect fare.

Finally, British Airways notes that it fully cooperated with the Department during the course of this investigation and that its consent to the issuance of this order does not constitute an admission that it committed the violations alleged by the Department.

Decision

The Enforcement Office previously advised British Airways of its obligation to meet the requirements of section 399.84(a) in Order 2014-9-2, issued on September 5, 2014, and Order 2012-10-1, issued on October 1, 2012. After careful consideration of this fact and all the information presented to us, we believe that enforcement action is warranted. The Enforcement Office and British Airways have reached a settlement in this matter in order to avoid litigation. Without admitting the violations found in this order, British Airways 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 \$40,000 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 British Airways PLC violated 14 CFR 399.84(a) by failing to state the full cost of the taxes, fees, and carrier charges to be paid by the consumer on its U.S. website;
3. We further find that British Airways PLC engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712 by failing to state the full cost of taxes, fees, and carrier charges to be paid by the consumer on its U.S. website;
4. We find that British Airways PLC violated Orders 2014-9-2 and 2012-10-1 by violating 14 CFR 399.84(a) and 49 U.S.C. § 41712;
5. We order British Airways PLC, and its successors and assignees, to cease and desist from similar violations of 14 CFR 399.84(a), 49 U.S.C. § 41712, Order 2014-9-2, and Order 2012-10-1 as described in ordering paragraphs 2, 3, and 4, above;
6. British Airways PLC is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4, above. Of that amount, \$20,000 shall be due and payable within 30 days after the service date of this order. The remaining amount, \$20,000, shall become due and payable immediately if, within one year of the date of issuance of this order, British Airways PLC, its successors or assignees, violates this order's cease and desist provisions or fails to comply with this order's payment provision, in which case British Airways PLC may be subject to further enforcement action for violation of this order;

7. 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 British Airways PLC 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

8. We dismiss the Complaint filed in Docket DOT-OST-2015-0004.

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
Aviation Enforcement and Proceedings

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