

2017-3-18



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

Issued by the Department of Transportation
On the 27th day of March, 2017

Third Party Complaint of

Benjamin Edelman

v.

Virgin Atlantic Airways Limited

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

Docket DOT-OST-2014-0156

Served March 27, 2017

CONSENT ORDER AND ORDER OF DISMISSAL

On September 10, 2014, Benjamin Edelman (Complainant) filed a third-party complaint under 14 CFR § 302.404 against Virgin Atlantic Airways Limited (Virgin Atlantic). The complaint alleges that Virgin Atlantic violated the Department's full fare advertising rule by misrepresenting taxes, fees, and carrier-imposed surcharges as "Taxes" on a specific webpage offering rewards flights on the Virgin Atlantic website. The Complainant contends that this practice constitutes a violation of 49 U.S.C. § 41712.

This order finds that Virgin Atlantic violated the Department of Transportation's ("Department") full fare advertising regulation, 14 CFR § 399.84(a). These violations also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712. The Department directs Virgin Atlantic to cease and desist from future violations of this regulation and section 41712, assesses the carrier a compromise civil penalty of \$30,000, and dismisses the complaint filed in this docket.

The Complaint

The Complainant states that on September 9, 2014, he visited the “Rewards Flight” page on Virgin Atlantic’s U.S.-facing website. Complainant states that on the “Economy Reward Seat Sale” and “Premium Economy Reward Seat Sale” portions of the Rewards Flights page, the taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation were listed under the heading “Taxes.” Complainant further states that he believes the heading “Taxes” was misleading. Complainant notes that the heading “Taxes” was accompanied by an asterisk that lead consumers to a disclaimer on another section of the page below the “Premium Economy Rewards Seat Sale” section.¹ Complainant alleges that the heading “Taxes” is unfair and deceptive because it creates an allusion that the fee does not include any charge applied solely by the carrier. Complainant also alleges that the asterisk attached to the heading “Taxes” leading consumers to another portion of the Rewards Flights page did not make it sufficiently clear to consumers that the heading “Taxes” included taxes, fees, and carrier-imposed surcharges. Finally, the Complainant states that other statements made in the booking process did not “cure” the initial confusion caused by the heading “Taxes.”

Answer of Virgin Atlantic

Virgin Atlantic filed its answer on September 24, 2014. Virgin Atlantic states that the heading “Taxes” which appeared on the Rewards Flight page of its U.S.-facing website was a “textual error in the heading of a list” which it corrected the same day the issue was discovered. Virgin Atlantic also states that, despite the error, the disclosure of taxes, fees, and carrier-imposed surcharges was made available to consumers through the asterisk that lead consumers to a disclaimer on another section of the page below the “Premium Economy Rewards Seat Sale” section. Virgin Atlantic states that this disclaimer included the text “taxes, fees, and carrier-imposed surcharges.” Virgin Atlantic further states that it also disclosed the taxes, fees, and carrier-imposed surcharges associated with ticketed travel prior to the purchase of a ticket through the “view fare breakdown” link displayed to consumers during the booking process.

Analysis and Decision

Section 41712 of Title 49 of the U.S. Code prohibits an air carrier, foreign 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,

¹ The disclaimer included the text “taxes, fees, and carrier-imposed surcharges” but did not state that taxes, fees, and carrier-imposed surcharges were incorporated into the heading “Taxes.” The disclaimer read, “The 25% reduction in mileage must be booked between September 9, 2014 and September 23, 2014. Taxes, charges, fees and carrier-imposed surcharges are accurate as of September 8, 2014 and are subject to change. The exact amount will be advised at the time of booking either via our website or contract centre.”

including all taxes, fees, and carrier-imposed 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 Office of Aviation Enforcement and Proceedings (Enforcement Office) issued guidance 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.”² 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 unfair and deceptive practices in violation of 49 U.S.C. § 41712.

The Complainant presented evidence that on September 9, 2014, Virgin Atlantic displayed on the Rewards Flights page of its U.S.-facing website a heading titled “Taxes” meant to encompass taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation. Upon further investigation, the carrier admitted that it mistakenly labeled taxes, fees, and carrier-imposed surcharges as “Taxes” on its U.S.-facing website. It was later discovered by the Enforcement Office that after the carrier corrected the initial error, the carrier made changes to its website and again mislabeled taxes, fees, and carrier-imposed surcharges as “Taxes and Fees” for a period of time. We conclude that Virgin Atlantic’s display of both “Taxes” and “Taxes and fees” as a representation of taxes, fees, and carrier-imposed surcharges violated 14 CFR § 399.84(a) and 49 U.S.C. § 41712.

The Enforcement Office has carefully considered the information provided by the Complainant and Virgin Atlantic and believes that enforcement action is warranted. The Enforcement Office and Virgin Atlantic have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Virgin Atlantic consents to the issuance of this order and to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR § 399.84(a). The carrier also agrees to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Virgin Atlantic and other carriers.

² “Additional Guidance on Airfare/Air Tour Price Advertisements” (February 21, 2012), available at <http://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes>.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Virgin Atlantic Airways Limited violated 14 CFR § 399.84(a) by mislabeling a heading on the Rewards Flights page of its U.S.-facing website as “Taxes,” which included taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation. Subsequently, Virgin Atlantic Airways Limited again violated 14 CFR § 399.84(a) by mislabeling the same heading on the Rewards Flights page of its U.S.-facing website as “Taxes and fees,” which included taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation;
3. We further find that Virgin Atlantic Airways Limited engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712 by mislabeling a heading on the Rewards Flights page of its U.S.-facing website as “Taxes,” which included taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation. Subsequently, Virgin Atlantic Airways Limited again violated 49 U.S.C. § 41712 by mislabeling the same heading on the Rewards Flights page of its U.S.-facing website as “Taxes and fees,” which included taxes, fees, and carrier-imposed surcharges associated with the purchase of air transportation;
4. We order Virgin Atlantic Airways Limited and its successors and assigns to cease and desist from further violations of 14 CFR § 399.84(a), as well as 49 U.S.C. § 41712;
5. We assess Virgin Atlantic Airways Limited \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described above;
 - a. \$15,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and
 - b. \$15,000 shall become due and payable if, within one year of the date of issuance of this order, Virgin Atlantic Airways Limited violates the order’s cease and desist provisions or fails to comply with the order’s payment provisions, in which case Virgin Atlantic Airways Limited may be subject to additional enforcement action for violation of this order.
6. We order Virgin Atlantic Airways Limited to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered will subject Virgin Atlantic Airways

Limited to an 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-2014-0156.

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

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