



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

**Issued by the Department of Transportation
on the 28th day of March, 2017**

**Third Party Complaint of
Benjamin Edelman and Jason Steele**

v.

Delta Air Lines, Inc.

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

Served March 28, 2017

Docket DOT-OST-2015-0001

CONSENT ORDER AND ORDER OF DISMISSAL

On January 6, 2015, Benjamin Edelman and Jason Steele (the Complainants) filed a third-party complaint under 14 CFR 302.401 against Delta Air Lines (Delta) alleging that the carrier misrepresented carrier-imposed surcharges as government taxes and fees on Delta's main U.S. facing website. The complaint alleges that Delta engaged in unfair and deceptive practices in violation of 49 U.S.C. §41712.

This order finds that Delta violated 14 C.F.R. 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.-facing website on certain fares accessible using Delta SkyMiles that involved an itinerary either originating out of or connecting through certain foreign countries. However, because only a very small, specialized number of transactions were affected, and Delta corrected the problem almost immediately after becoming aware of it, we conclude that a cease and desist order without the assessment of civil penalties is warranted. This order, therefore, directs the carrier to cease and desist from further similar violations of the cited rule and statute and dismisses the complaint filed in the docket.

The Complaint

Mr. Steele presented evidence that Delta labeled taxes, fees, and carrier-imposed surcharges as "Taxes" on certain quoted round-trip reward travel fares in violation of 14 CFR 399.84(a) and 49 U.S.C. § 41712. The Complaint includes a screenshot of a quote for round-trip reward travel from Charles de Gaulle International Airport to (CDG) John F. Kennedy International Airport (JFK) showing that the roundtrip

fare would cost 95,000 Delta SkyMiles + €383.72 “Taxes.” The Complaint also includes a screenshot of the flight summary page, which shows that the carrier-imposed international surcharge was €282.00, while the government taxes, fees and charges amounted to €35.01. The Complainants allege that Delta mischaracterized the carrier-imposed international surcharges in violation of the Department’s regulations. The Complainants asked the Department to investigate these practices, to order Delta to issue refunds to ticketed purchasers, to impose civil penalties, and to refer this matter to appropriate U.S. and foreign tax authorities.

Delta’s Answer

Delta filed its answer on January 20, 2015. Delta contends that it took immediate corrective action once it became aware of the issues identified in the complaint. Delta explains that on November 15, 2014, when it rolled out a website update, that caused a computer glitch that resulted in the erroneous identification of certain charges as “taxes” on specific fares purchased with Delta SkyMiles. The error, which lasted on Delta’s website for approximately two months (November 12, 2014, through January 8, 2015) was fixed within 48 hours after the carrier became aware of the error.

In response to a request for information from the Department, Delta explains that the glitch affected only itineraries for service that either originated in, or connected through, certain foreign countries. Furthermore, in certain cases, the air service never touched the United States. Delta notes that the glitch affected only a very small percentage of Delta’s total online ticket transactions.

Applicable Law

49 U.S.C. §41712 prohibits an air carrier from engaging in an unfair or deceptive practice or an unfair method of competition. Pursuant to that authority, the Department issued its full-fare advertising rule, 14 CFR 399.84(a) to ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions. 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 Office of Aviation Enforcement and Proceedings (Enforcement Office) issued guidance on how taxes and surcharges should be described in fare advertisements. The guidance explains that including carrier-imposed surcharges and other fees not imposed by a government under the label of “taxes,” or under the label “taxes and fees” is an unfair and deceptive practice in violation of section 41712 because 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.”¹ Moreover, such a practice may mislead consumers into believing that a carrier’s fare is lower than fares available through other sales channels. Violations of 14 CFR 399.84(a) also constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

¹ 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>.

Decision

We believe that the Delta violated the provisions of 14 CFR 399.84(a) when it mischaracterized certain carrier-imposed surcharged as “taxes” on certain fare displays between November 14, 2014, and January 8, 2015, on its website. The Enforcement Office and Delta have reached a negotiated settlement of this matter under which the carrier, without admitting or denying the violations described above, consents to the issuance of this order to cease and desist from future similar violations of 14 CFR 399.84(a) and 49 U.S.C. § 41712. However, in view of the limited scope of the affected fare advertisements and the prompt and complete remedial action undertaken by Delta, we find that civil penalties are not warranted in this instance. In addition, by this order, we are dismissing the complaint filed in the docket.

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 Delta Air Lines, Inc., violated 14 CFR 399.84(a) by publishing fare displays that inaccurately characterized carrier-imposed fees and surcharges as taxes and government fees;
3. We find that by engaging in the conduct described in paragraph 2, Delta Air Lines Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Delta Air Lines Inc., and its successors and assigns to cease and desist from further violations of 14 CFR 382.155, 49 U.S.C. § 41712; and
5. We dismiss the complaint filed in Dkt. DOT-OST-2015-0001.

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
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