BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

Benjamin Edelman and Jason Steele, third-party complainants v. Delta Airlines

COMPLAINT OF BENJAMIN EDELMAN AND JASON STEELE

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Dated: January 6, 2015
BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

Benjamin Edelman
and Jason Steele

Complaint
–
Delta Air
Lines

v.

Docket DOT-OST-2015-____

Delta Air Lines

COMPLAINT OF BENJAMIN EDELMAN AND JASON STEELE

1. This complaint arises out of Delta Air Lines mischaracterizing fees as “tax” and thereby failing to comply with applicable DOT requirements.

2. On January 2, 2015, Steele noticed that the Delta web site appeared to be making false statements of “tax” beyond the amounts actually provided by law.

3. On January 5, 2015, Edelman used the Delta web site, Delta.com, to quote round-trip award coach travel from CDG to/from JFK. He found that the Delta site misrepresented carrier-imposed surcharge as “tax.”

4. Specifically, Delta provided the fare quote shown in Attachment 1. Delta quoted a “tax” of €388.33 on the outbound segment CDG-JFK. This “tax” was shown for itineraries entirely operated by DL (e.g. the nonstop DL 100, the seventh option listed in Attachment 1) as well as itineraries entirely operated by partners (e.g. AF 22, the first option listed in Attachment 1) and multicarrier itineraries (e.g. AF 84 connecting to DL
2040, the fifth option listed). When I reviewed options for the return segment JFK-CDG, Delta quoted an adjusted total “tax” of €383.72, again applying to itineraries operated by Delta, partners, and a combination.

5. On information and belief, there is no “tax” of €383, €388, or a similar amount on this route. On the itinerary confirmation screen (Attachment 2), I clicked the link to “View detailed Charges” (s.i.c.), yielding the screen in Attachment 3. There, Delta admits that €282 of the “tax” is in fact “Carrier-imposed International Surcharge*”.¹ We thus conclude that Delta overstated the amount of “tax” by €282 per passenger on this route.

6. Delta’s statement of “tax” is literally false.

7. It is unfair and deceptive to characterize a charge as “tax” when it is set by a carrier of its own volition and need not be remitted to any government, airport, or similar authority. Such false statements provide consumers with inaccurate information as to the actual cost of their travel.

8. Delta may argue that its itinerary confirmation page (Attachment 2) in some way cures the false statement of “tax” in the prior quotes (Attachment 1). Attachment 2 does use the accurate label “Taxes, Fees & Charges” label to describe the €383.72 amount. But this label is consistent with the claim, which Delta made in the Attachment 1 screenshots, that in fact the entire €383.72 is all “tax” and none of it is carrier-imposed charge. Nothing in the Attachment 2 screenshot alerts a customer that every fare quote in Attachment 1 was in fact false as to the supposed “tax.”

¹ Although Delta includes an asterisk at the end of that label, Delta offers no footnote or other statement to elaborate on the label. The “Learn more about Taxes/Fees” link goes to https://www.delta.com/content/www/en_US/traveling-with-us/planning-a-trip/booking-information/fare-classes-and-tickets/taxes-and-fees.html which offers some relevant information but provides information about the entire “detailed charge” breakdown, not the carrier-imposed surcharge specifically.
9. Nor does the “View detailed Charges” screen cure the false statements shown in Attachment 1. The Detailed Charges screen is only shown to users who elect to click it, not as a default part of the transaction.

10. In some instances, Delta’s fare quotes draw a distinction between paying with “miles” and with “miles + cash.” In those fare quotes, the false statement of “tax” is particularly prominent and particularly likely to skew consumers’ purchase decisions. See Attachment 4 (with first option presenting an itinerary on Air France with supposed “tax” of US$309.56). Clicking through, I was then presented with an adjusted “tax” of $522.56 (Attachment 5). In the Detailed Charges screen, I was able to determine that $380.30 of the $522.56 was in fact carrier-imposed charge, not a “tax.”

11. The misstatements at issue occur on the ordinary Delta web site, Delta.com. A US customer reasonably begins at Delta.com, with site localization set to US English (denoted with a US flag and the label “ENGLISH”). Indeed, the site is then provided in English; sales can be made to persons with addresses and phone numbers within the US; and US members of Delta’s frequent flier program find their membership details (including US phone number and US street address) automatically filled into the reservation form. We credit that the false “tax” is sometimes quoted in euros (as in Attachments 1-3) or other foreign currency, though not always (Attachments 4-6). In any event, Delta satisfies the majority of the conditions specified in Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections, Section IX, Question 1. Moreover, the Delta.com site at issue, in the way we used it, is the only way a US-based Delta customer can use the Internet to redeem Delta frequent flier miles for award travel. Put differently, the
screenshots we present show the Delta site; there is no sense in which we went to any special “Europe site” or “international site.” Finally, on information and belief, nothing in any other country’s law or regulation allows or encourages Delta to make false statements of nonexistent “tax.” It is thus entirely appropriate to apply the Department’s rules on truthful advertising, including accurate statement of “tax,” to these Delta fare quotes, even for travel originating outside the US.

12. In further testing, Edelman found similar misstatements in other Delta fare quotes, including for travel to and from other origins and destinations and on other dates. On information and belief, many or all of Delta’s intercontinental award tickets from outside the US to the US entail a statement of “tax” that is actually a fee.

13. The misstatements at issue are large relative to applicable fares. For example, when Edelman quoted award travel MUC-JFK-MUC on January 6, Delta.com reported “tax” of €429.21, (Attachments 7-8) of which €308.00 was actually “carrier-imposed international surcharge” (Attachment 9). An ordinary paid ticket, on the same flights on the same day, costs €489.92 (Attachment 10). Thus, the nonexistent “tax” is 62.9% of the cost of an ordinary paid ticket on that route, significantly overstating applicable tax and significantly overstating the supposed savings a consumer enjoys by redeeming frequent flier points. Indeed, in this case, a passenger redeeming Delta miles uses 95,000 miles to achieve a cash savings of only €60.71, a value of just €0.000639 per mile (six one hundredths of a euro cent per Delta mile redeemed). Passengers would be unlikely to accept such a poor redemption value were it not for Delta overstating the supposed “tax” to inflate the supposed redemption value.
14. Delta’s deceptive conduct is compounded by the statements it makes during paid bookings, which necessarily precede redemption bookings (since passengers must earn miles before they redeem). Consider a passenger who makes a series of paid bookings, at each booking seeing a screen like Attachment 10, quoting “taxes, fees and charges” of €124.92 per person, round-trip, for that itinerary. Such a passenger reasonably expects to be able to redeem Delta miles (in an amount specified by the award chart) along with approximately €124 of money, in order to fly the same route on an award redemption. Instead, when that passenger attempts to redeem miles, Delta adds a “carrier-imposed surcharge” (mischaracterized as “tax”) of €308 on the redemption, even as Delta’s own prior statements (e.g. Attachment 10) specifically indicated that no such surcharge applies. We see no proper pro-competitive purpose for this tactic. On the other hand, there is a clear harmful effect: Causing consumers to expect modest “taxes, fees, and charges” (based on their experience with the Attachment 10 fare quote from their paid travel) to induce them to fly on Delta and partners in Delta’s mileage program, and then surprising them with high surcharges when they actually try to redeem miles.

15. We ask that the Department of Transportation:

(1) Exercise its authority under 49 USC 41712 to open an investigation of Delta for having engaged in, and continuing to engage in, the unfair and deceptive practices described above;

(2) Pursuant to such investigation, order Delta to refund to ticket purchasers all monies represented to ticket purchasers as “tax” or government-imposed fees, but not actually remitted to governments;

(3) Impose appropriate civil penalties on Delta; and
(4) Refer this matter to appropriate US and foreign tax collection agencies for investigation of possible tax fraud or other violations of tax law in non-payment to governments of monies collected as “taxes” or government-imposed fees.

Pursuant to Title 18 United States Code Section 1001, we certify that we have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. We understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Respectfully submitted,
/s/        /s/
Benjamin Edelman    Jason Steele
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<tr>
<th>Flight</th>
<th>Departure</th>
<th>Arrival</th>
<th>Duration</th>
<th>Tickets</th>
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<td>8:06 PM</td>
<td>15h 1m</td>
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<td>DL 100</td>
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### Attachment 4

#### Book a Trip

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<th>Flight Details</th>
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<th>MILES + CASH</th>
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#### Additional Information

- **Outbound**: TLV > LAX
- **Tel Aviv, Israel (TLV)** to **Los Angeles, CA (LAX)**
- **Passengers**: 1
- **Departure Date**: February 08, 2015
- **Total Price**: $187,500 + $334.06
- **Baggage**: Fees may apply

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Benjamin Edelman and Jason Steele
Complaint – Delta Air Lines
Attachment 8 (continued)

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<th>Duration</th>
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Certificate of Service

I hereby certify that I have, this 6th day of January, 2015 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Scott McClain                     scott.mcclain@delta.com
Blane Workie                      blane.workie@dot.gov
Kimberly Graber                   kimberly.graber@dot.gov

/s/
____________________
Benjamin Edelman