

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

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)  
Benjamin Edelman, )  
third-party complainant )  
)  
v. ) Docket DOT-OST-2014-\_\_\_\_  
)  
Virgin Atlantic )  
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**COMPLAINT OF BENJAMIN EDELMAN**

Comments with respect to this document should be addressed to:

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Dated: September 10, 2014

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1. This complaint arises out of Virgin Atlantic mischaracterizing carrier-imposed fees as “tax.”
2. On September 9, 2014, I browsed the Virgin Atlantic web site, virginatlantic.com. From the Virgin-Atlantic.com home page, I clicked the Flying Club entry on the top navigation bar (at top-right), then clicked “Reward Flights” in the section “Spend Miles.” I received the screen shown in Attachment 1.
3. On Attachment 1, Virgin Atlantic describes an “Economy Reward Seat Sale” and, further down the page, a “Premium Economy Reward Seat Sale.” Each listing gives a city destination (for travel to/from UK), the number of miles required, and the “Taxes\*” associated with such travel. But the “taxes” quoted exceed any genuine government-imposed taxes or airport-imposed fees. Rather, on information and believe, the bulk of the specified amount is a carrier-imposed fee.
4. Virgin Atlantic’s statement of “tax” is literally false.

5. It is unfair and deceptive to characterize a charge as a “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.

6. Virgin Atlantic may claim that the false statement of “tax” is mitigated by the asterisk associated with the label. A reader who finds the explanation is told: “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 contact centre.” The second sentence pertains to the charges at issue, but it in no way cures the false statement of “tax.” Specifically, the quote only affirms that certain charges are accurate of a certain date. The quote does nothing to indicate that an amount presented as “tax” is actually a carrier-imposed fee, not an actual “tax” required by any government, airport, or similar authority.

7. Virgin Atlantic may claim that other statements, later in the booking process, cure the initial false statement of “tax.” But the standard on-screen text, presented within the Virgin-atlantic.com booking process, does not separate the actual “tax” from carrier-imposed surcharges, nor does it otherwise affirmatively alert consumers that the initial statement of “tax” was false. See Attachment 2, presenting a “total price” “including taxes, fees, charges, and carrier imposed surcharges.” Notably, this label leaves open the possibility that the entire \$470.40 is indeed “tax”—as Attachment 1 had stated, and as many consumers expect when redeeming frequent flier bookings that are widely understood to cover (and historically did cover) all charges

except bona fide government taxes. While the “fare breakdown” link would take users to a screen correctly disclosing the amount of actual tax versus carrier charge, this screen is outside the standard booking process. On information and belief few users view it.

8. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of Virgin Atlantic for having engaged in, and continuing to engage in, the unfair and deceptive practices described above;
- (2) Pursuant to such investigation, order Virgin Atlantic 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 Virgin Atlantic; 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 USC §1001, I certify that I 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. I 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/

Benjamin Edelman

Attachment 1

The screenshot shows the Virgin Atlantic website's 'Reward flights' page. The browser address bar indicates the URL is www.virgin-atlantic.com/us/en/flying-club/spend-miles/reward-flights.html. The page has a dark red header with the Virgin Atlantic logo and navigation links like 'Destinations and low fares', 'Manage your flights', 'Book travel', 'Travel information', 'Virgin experience', and 'Flying Club'. A sidebar on the left is titled 'Spend miles' and includes links for 'How it works', 'Reward flights', 'CombiFares', 'Reward seats tips', 'Upper Class chauffeur', 'Miles Plus Money', 'Spend miles elsewhere', and 'Spending calculator'. The main content area features a large heading 'Reward flights' and a sub-heading 'Choose a reward, you've earned it'. Below this, there is a 'Book a reward flight' button and a table titled 'Economy Reward Seat Sale' which lists various destinations and their corresponding mile requirements and taxes.

**Reward flights**

When you earn enough miles for a reward flight\*, it's time to choose one of our great destinations around the world. How many miles to your next destination?

It's quick and easy to book reward seats with us online. If you've got the miles why not see what's available today for your next trip?

\* Flying Club reward flights are subject to the payment of applicable taxes, charges, fees and surcharges. The exact amount will be advised at the time of booking either via our website or contact centre.

**Book a reward flight**

Don't forget, redemption bookings between London Heathrow, Manchester, Aberdeen and Edinburgh will incur a charge of £34 (return), or £17 (one-way).

The below pdf, lets you see where you can spend your miles.

The table is in pdf format. If you do not already have it, download the [Adobe Acrobat Reader](#)<sup>20</sup> for free now.

**REWARD SEAT SALE**

TO/FROM UK	Economy	Taxes*
ATLANTA	26,250	\$500
BOSTON	26,250	\$500
NEWARK/JFK	26,250	\$500
WASHINGTON DC	26,250	\$500
CHICAGO	26,250	\$500
MIAMI	31,875	\$500
ORLANDO	31,875	\$475
LAS VEGAS	31,875	\$475
LOS ANGELES	31,875	\$500
SAN FRANCISCO	31,875	\$475
VANCOUVER	31,875	\$475
ANTIGUA	33,750	\$410
BARBADOS	33,750	\$375
GRENADA	33,750	\$390
MONTEGO BAY	33,750	\$415
ST. LUCIA	33,750	\$385
CANCUN	33,750	\$415
CAPE TOWN	33,750	\$550
JOHANNESBURG	33,750	\$550
LAGOS	28,785	\$500
DUBAI	28,785	\$545
NEW DELHI	31,875	\$475
MUMBAI	31,875	\$475
HONG KONG	37,500	\$415
SHANGHAI	37,500	\$410
TOKYO	37,500	\$635

Attachment 1 (continued)

www.virgin-atlantic.com/us/en/flying-club/spend-miles/reward-flights.html

TOKYO	37,500	\$635
MANCHESTER**	5,625	\$165
EDINBURGH**	5,625	\$165
ABERDEEN**	5,625	\$165

### Premium Economy Reward Seat Sale

TO/FROM UK	Economy	Taxes*
ATLANTA	41,250	\$810
BOSTON	41,250	\$810
NEWARK/JFK	41,250	\$810
WASHINGTON DC	41,250	\$810
CHICAGO	41,250	\$810
MIAMI	52,500	\$810
ORLANDO	52,500	\$810
LAS VEGAS	52,500	\$810
LOS ANGELES	52,500	\$810
SAN FRANCISCO	52,500	\$810
VANCOUVER	52,500	\$745
ANTIGUA	52,500	\$730
BARBADOS	52,500	\$690
GRENADA	52,500	\$710
MONTEGO BAY	52,500	\$740
ST. LUCIA	52,500	\$700
CANCUN	52,500	\$720
JOHANNESBURG	56,250	\$830
LAGOS	45,500	\$825
DUBAI	45,000	\$700
NEW DELHI	52,500	\$775
MUMBAI	52,500	\$775
HONG KONG	60,000	\$810
SHANGHAI	52,500	\$800
TOKYO	52,500	\$810

Round trip rewards relate to two flown sectors only.

\*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 contact centre.

\*\* Members redeeming miles between North America and the above destinations will not be charged additional mileage. Members can redeem flights for the same miles as North America to London.

[Full Terms and Conditions](#)

Reward Seat Sale Terms & Conditions +

Upgrades table +

Spend miles table +

Companion miles table +

### CombiFares

Get the most from your miles. Combine a one-way flight reward with a one-way published fare and just like that, you're there.

> Discover more

### Upgrades

Fancy upgrading yourself? Don't mind if you do. Use your miles to make the most of your miles.

Attachment 2

The screenshot shows the Virgin Atlantic website interface. At the top, there is a navigation bar with links for 'Destinations and low fares', 'Manage your flights', 'Book travel', 'Travel information', 'Virgin experience', and 'Flying Club'. Below this is a breadcrumb trail: 'Home > Book travel > Book your flight'.

The main content area is divided into two sections: 'Outbound journey' and 'Return journey'. Each section displays flight details for a specific date and time, along with three fare classes: Economy, Premium Economy, and Upper Class. The Economy class is highlighted in red and shows the lowest cost.

**Outbound journey: Boston (BOS) to London (LHR)**  
 Date: Tue 14, Oct 2014  
 Depart: 21:40 from Boston (BOS)  
 Arrive: +1 day 09:10 at London (LHR)  
 Duration: 6h 30min  
 Stops: 0  
 Flight info icon

Fare Class	Description	Price
Economy	Explore Economy (Video)	13,125 miles + USD 134.60 (Lowest cost)
Premium Economy	An enhanced experience (Video)	20,625 miles + USD 234.60
Upper Class	Luxury redefined (Video)	Sorry, no seats available

Prices shown are only valid as part of a return journey. All fares are displayed in USD

**Return journey: London (LHR) to Boston (BOS)**  
 Date: Tue 21, Oct 2014  
 Depart: 17:10 from London (LHR)  
 Arrive: 19:40 at Boston (BOS)  
 Duration: 7h 30min  
 Stops: 0  
 Flight info icon

Fare Class	Description	Price
Economy	Explore Economy (Video)	13,125 miles + USD 335.80 (Lowest cost)
Premium Economy	An enhanced experience (Video)	20,625 miles + USD 550.40
Upper Class	Luxury redefined (Video)	Sorry, no seats available

Prices shown are only valid as part of a return journey. All fares are displayed in USD

On the right side of the page, there is a 'Refine Search' button and a 'Your basket' section. The basket shows the following items:

- Outbound: miles 13,125 + USD 134.60
- Inbound: miles 13,125 + USD 335.80
- Total price: miles 26,250 + USD 470.40 (including taxes, fees, charges and carrier imposed surcharges)

Below the basket, there are links for 'View fare breakdown', 'Baggage allowance', and 'Fare conditions'. A 'Next step' button is also present.

At the bottom of the page, there is a 'Legal information' section with a warning icon. The text includes:

- All fares shown exclude applicable taxes, fees, charges and carrier imposed surcharges.
- If paying with a UK credit card, there will be an additional charge equal to 1.5% of the total ticket value.
- Note this is a UK retail site. Non UK Cardholders transacting on this site may be subject to a cross border fee applied by their Card Issuer.
- The prices displayed above are subject to change and are not guaranteed until payment is made and accepted. **Optional supplements** selected during the booking process may increase the total fare.
- The prices shown are only for flights taken as part of a return journey. Prices are for online customers and may vary.
- You may cancel your booking without penalty within 24 hours of making your reservation as long as that reservation is made one week or more prior to a flight's scheduled departure. Please contact the contact centre to cancel the booking.

**Certificate of Service**

I hereby certify that I have, this 10th day of September, 2014 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Blane Workie

blane.workie@dot.gov

Anita M. Mosner

anita.mosner@hklaw.com

/s/

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Benjamin Edelman