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

Benjamin Edelman, third-party complainant v. British Airways Plc

COMPLAINT OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

Benjamin Edelman
169 Walnut St.
Brookline, MA 02445
E-mail: ben@benedelman.org

Dated: January 13, 2015
COMPLAINT OF BENJAMIN EDELMAN

1. This complaint arises out of the British Airways web site advertising low taxes and carrier-imposed fees on certain award flights in an initial fare quote, only to substitute higher charges on a further screen just seconds later.

2. Effective January 26, 2012, the Department’s “Enhancing Airline Passenger Protections” require that the first price quote presented must be the full price, including all taxes, fees, and carrier surcharges. See 14 CFR 399.84 (“The Department considers any advertising solicitation by a direct air carrier … to be an unfair and deceptive practice in violation of 49 USC 41712, unless the price stated is the entire price to be paid by the customer”), 76 Fed. Reg. 23110, 23143 (rejecting various arguments why the proposed rule should not be implemented).

3. Notwithstanding this clear rule, the British Airways USA-English web site, https://www.britishairways.com/travel/home/public/en_us, widely presents initial
price quotes below the entire amount British Airways requires for travel on the specified routes. It appears that affected itineraries include most or all intercontinental award travel on flights operated by US Airways.

I. British Airways’ False Initial Statements of Applicable Charges

4. For example, on January 9, 2015, I used BA’s site to quote one-way award travel PHL-MUC on March 23, 2015. After I selected US 716, PHL-MUC nonstop, BA’s site quoted a “Total Price” “Incl. all taxes fees and carrier charges” of “25000 Avios + $ 23” (Attachment 1). I pressed “Continue” and received a screen that then requested “Taxes, fees and carrier charges* per person” of $285.80 (Attachment 2). I clicked the “i” icon to see details about the taxes, fees and carrier charges; the resulting screen detailed a “carrier imposed charge” of $258.00 as well as three “government, authority and airport charges” totaling $27.80. Notably, even that $27.80 exceeded the $23 indicated in the first fare quote, Attachment 1. I proceeded further and British Airways asked for a credit card to collect $285.80.

5. On January 9, 2015, I used BA’s site to quote one-way travel PHL-TLV on March 22, 2015. The first fare quote was 30000 Avios + $23 (Attachment 4). The second fare quote was $330.80 (Attachment 5), a price increase of $307.80.

6. On January 9, 2015, I used BA’s site to quote one-way travel PHL-TLV on April 5, 2015. The first fare quote was 38750 Avios + $338 (for travel PHL-LHR-TLV with first segment operated by US Airways and the second segment as in BA World Traveler Plus) (Attachment 6). The second fare quote was 38750 Avios plus $575.11 (Attachment 7), a price increase of $237.11.
7. On January 9, 2015, I used BA’s site to quote round-trip travel PHL-TLV-
PHL on April 5, 2015 and April 17, 2015. The first fare quote was 68750 Avios + $399
(for travel PHL-LHR-TLV with first segment operated by US Airways and the second
segment as in BA World Traveler Plus; return TLV-PHL nonstop operated by US)
(Attachment 8). The second fare quote instead sought $939.67 for “taxes, fees and
carrier charges” (Attachment 9), a price increase of $540.67.¹

8. On January 13, 2015, I used BA’s site to quote one-way travel PHL-CDG
on January 23, 2015. The first fare quote was 20000 Avios and $23 (Attachment 10).
The second fare quote instead sought $285.80 of “taxes, fees and carrier charges”
(Attachment 11), a price increase of $262.80.

II. The Scope and Size and of BA’s False Statements about Applicable Charges

9. Thus, I have demonstrated that British Airways’ false statements about
applicable charges extend to both one-way and round-trip journeys, for travel both
originating in the US and originating overseas, for travel between the US and Europe as
well as between US and the Middle East, for travel solely on US Airways as well as for
tavel that combines travel on multiple carriers of which US Airways is one. In other
testing, I confirmed that similar false statements occur for both single-passenger and
multi-passenger journeys. All of these false statements are made on BA’s USA-English
web site, marketed to US customers.

10. The misstatements at issue are large relative to charges otherwise
applicable for these journeys. For example, the total dollar payment sought for the PHL-

¹ Attachment 9 also notes a “Price per person” of $185.00. Consistent with the display at the top of
Attachment 9, “How many Avios do you want to use for your flight?”, this charge was imposed because
my Avios account lacked sufficient points to cover the full 68750 quantity required for this journey. It
seems a passenger with sufficient Avios would not be charged this additional fee. This fee is not part of my
complaint, and I do not contend that it is improper.
MUC journey, $285.80 (Attachment 2), is more than twelve times the $23 indicated in the first fare quote (Attachment 1). The dollar payment sought for PHL-TLV, $330.80 (Attachment 5), is more than 14 times the $23 indicated in the first fare quote (Attachment 4). The dollar payment sought for PHL-TLV-PHL, $939.67 (Attachment 9), is more than double the $399 indicated in the first quote (Attachment 8), and the increase is more than $540, nearly half the cost of ordinary coach travel for this trip. (US Airways offered simple nonstop round-trip coach travel PHL-TLV-PHL at $1,175 for these dates.)

11. In some instances, the screenshots described herein are only partially self-authenticating. For example, Attachment 2 does not show the specific itinerary at issue and thus does not immediately confirm that it corresponds with the itinerary requested in Attachment 1. I therefore prepared motion video screen-capture files preserving my observations. These are electronic files which I can provide to the Department or British Airways upon request. I will also make them available on my web site, linked from http://www.benedelman.org/airfare-advertising/.

III. Literal Falsity and Damages

12. British Airways’ initial statement of “Total Price” is literally false. On information and belief, British Airways was never willing to sell the listed tickets at the listed prices.

13. It is unfair and deceptive to claim that a journey may be booked at a “Total Price” when in fact the carrier does not allow booking of that journey at that price.

14. In the context of award bookings, passengers are particularly likely to rely on British Airways’ initial quotes. A passenger might see the initial fare quote, as in Attachment 1, and initiate a conversion of points or miles from another program into
British Airways Avios,\(^2\) or a transfer of Avios from another member,\(^3\) in order to obtain enough Avios to complete the redemption. After performing such a transfer, the passenger would then re-request the award booking, proceed to the second fare quote and be surprised to learn of the much higher charges as disclosed in Attachment 2 and similar. Moreover, conversions from another program to Avios usually are (or are presented as) irreversible, such that the passenger cannot merely return the miles or points to the program from which they originate. While a transfer from one member’s Avios account to another could be undone with a further transfer, this would incur a significant additional fee (for the second transfer). Thus, such a passenger incurs harm directly as a result of British Airways’ false initial fare quote, and the correct subsequent fare quote does not cure that harm. Indeed, I first learned of BA’s false statements in this area due to an affected customer in exactly this circumstance.

15. On information and belief, there are other circumstances, perhaps difficult for BA or the Department to anticipate, in which BA’s false statements could further distort consumers’ decisions or cause additional damages.

IV. **Anticipated Defenses**

16. British Airways may seek shelter in the statement, in the initial fare quote (Attachment 1 and similar) that “You will see exact cost after you click ‘Continue’.” Indeed, in my testing, even beyond the routes affected by the large discrepancies detailed here, BA’s initial quotes (Attachment 1 and similar) often vary from BA’s subsequent

---


quotes (Attachment 2 and similar) by $5 to $10. I do not know the reason for that variation. But applicable regulation appears to disallow such variation. See 14 CFR 399.84: “The Department considers any advertising solicitation by a direct air carrier … to be an unfair and deceptive practice in violation of 49 USC 41712, unless the price stated is the entire price to be paid by the customer.” This requirement makes no allowance for any change, large or small, from the first fare quote. Nor does this requirement allow a carrier to escape the obligations of the requirement through a statement that correct information will be provided some subsequent point.

17. British Airways may argue that the initial fare quotes were unrealistically low. But these are award redemptions, in which passengers understand that their primary form of payment for travel is frequent flier points earned through prior travel. Indeed, historically such redemptions were completely free of a monetary co-payment. Moreover, US Airways and American Airlines offer the same flights for award redemption with total cash payment comparable to the initial British Airways quotes. A customer seeing the fare quotes in Attachment 1, and similar, has zero reason to expect that those fare quotes are anything other than accurate.

18. I ask that the Department of Transportation:

(1) Exercise its authority under 49 USC 41712 to open an investigation of British Airways for having engaged in, and continuing to engage in, the unfair and deceptive practices described above;
(2) Pursuant to such investigation, order British Airways to refund to ticket purchasers all monies charged to ticket purchasers above and beyond the amounts specified on the first fare quote;

(3) Impose appropriate civil penalties on British Airways.

Pursuant to Title 18 United States Code Section 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

Attachment 2
### Charges applied to your flight

There are certain taxes, fees and carrier charges that are applied to your booking by British Airways, airport operators, governments or other authorities. Here you will find a full breakdown and explanation of the taxes, fees and carrier charges applied to your booking.

<table>
<thead>
<tr>
<th>Government, authority and airport charges</th>
<th>Per adult</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation Tax (Departure) - USA</td>
<td>USD 17.70</td>
</tr>
<tr>
<td>Passenger Civil Aviation Security Service Fee - USA</td>
<td>USD 5.60</td>
</tr>
<tr>
<td>Passenger Facility Charge</td>
<td>USD 4.50</td>
</tr>
<tr>
<td>Total government, authority and airport charges*</td>
<td>USD 27.80</td>
</tr>
</tbody>
</table>

**More information**

<table>
<thead>
<tr>
<th>British Airways fees and carrier charges</th>
<th>Per adult</th>
</tr>
</thead>
<tbody>
<tr>
<td>carrier imposed charge</td>
<td>USD 256.00</td>
</tr>
<tr>
<td>Total British Airways fees and carrier charges</td>
<td>USD 256.00</td>
</tr>
</tbody>
</table>

**More information**

| Total taxes, fees and carrier charges per person | USD 286.80 |
Attachment 6

Attachment 7
Attachment 9
Certificate of Service

I hereby certify that I have, this 13th day of January, 2015 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

James Blaney                   jim.blaney@ba.com
Blane Workie                   blane.workie@dot.gov
Kimberly Graber                kimberly.graber@dot.gov

/s/
__________________________
Benjamin Edelman