

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-2013-____
)
Air Europa)
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COMPLAINT OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

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Dated: December 16, 2013

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COMPLAINT OF BENJAMIN EDELMAN

1. This complaint arises out of Air Europa mischaracterizing fees as “tax,” adding surcharges not disclosed in the first fare quote, and thereby failing to comply with applicable DOT requirements.

2. On December 13, 2013, I used the Air Europa web site, Aireuropa.com, to quote ordinary paid coach travel from New York JFK to Madrid, Spain. I found that the Air Europa site misrepresented carrier-imposed surcharge as “tax.”

3. Specifically, Air Europa provided the fare quote shown in Attachments 1-3. On the left panel of the fare quote, Air Europa indicated a “price per adult” cost of 323 Euros plus “taxes” of 430.63 Euros minus a 12 Euro discount, for a total of 741.63 EUR. If a consumer moves his mouse to the plus sign shown in the fare quote, a further window appears, reiterating the false statement of “taxes.” See Attachment 2. If a consumer presses the Reserve button to proceed to booking, the false statement of “taxes” remains

on screen. See Attachment 3. If a consumer enters passenger details, the final booking confirmation page again repeats the false statement of “taxes.” See Attachment 4.

4. On information and belief, there is no “tax” of 430.63 EUR on this route. ITA Matrix indicates that Air Europa imposes surcharges coded as “YQ”, although I was unable to determine the amount of YQ that Air Europa imposes on this routing.

5. Air Europa’s statement of “tax” is literally false.

6. 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.

7. I previously found that the Air Europa web site made the same false statement of “tax” on April 4, 2013. I retain appropriate screenshot proof which I can provide upon request. On information and belief, the false statements at issue occurred continuously throughout this period. I do not know when these false statements began.

8. Air Europa further violates DOT rules by adding an additional fee not included in the first fare quote. Under DOT rules effective January 26, 2012, “the first price quote presented must be the full price, including all taxes, fees and all carrier surcharges” (emphasis added). But Attachments 1-3 also show Air Europa repeatedly stating that “Service Fee not included”. To determine the amount of the service fee, I pressed the Reserve button in Attachment 1, then filled in the passenger details in Attachment 3 (requiring twice entering my name, twice entering my passport number, twice entering my phone number, entering my date of birth and date of passport expiration, and more), and finally received the information shown in Attachment 4 – the

first mention of an additional 24 EUR fee. The top of Attachment 4 states “Collection types: Electronic Ticket (24 EUR)”. The bottom of Attachment 4 reiterates the 24 EUR charge. The screenshots show no instance in which I was asked for my preference of ticket collection methods or offered any way to receive a ticket that would avoid this 24 Euro additional charge.

9. The 24 Euro charge appeared well into the booking process. Specifically, this charge was first indicated after I had been quoted the base price four different times (Attachment 1 left side, Attachment 1 top, the popup window visible in Attachment 2, and Attachment 3 left side). This charge was first indicated after I had filled in the lengthy form in Attachment 3. Because this charge is disclosed at such a late stage in the booking process, it deters consumers from taking their business elsewhere.

10. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of Air Europa for having engaged in, and continuing to engage in, the unfair and deceptive practices described above;
- (2) Pursuant to such investigation, order Air Europa to refund to ticket purchasers all monies represented to ticket purchasers as “tax” or government-imposed fees, but not actually remitted to governments;
- (3) Pursuant to such investigation, order Air Europa to refund to ticket purchasers all “service fees” not included in the first fare quote;
- (4) Impose appropriate civil penalties on Air Europa; and
- (5) 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, 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 AirEuropa website interface. At the top, there is a navigation bar with links for Reservations, On-line Boarding, Services, Passenger Guide, and Flying Blue. Below this is a calendar for May 2014 with dates 12 through 25. The main content area is divided into two columns. The left column contains a 'Reservation Summary' for a round trip from New York (JFK) to Madrid (MAD) and back. The right column shows search results for the same route, including flight numbers and prices. A 'BEST PRICE AVAILABLE' banner is visible above the search results. The total price for the selected flight is 741.63 €, and another option is priced at 864.63 €. A 'Reservations' contact box is located at the bottom left of the main content area.

Reservation Summary

Outbound New York (JFK)(JFK) Madrid(MAD)
Date: 14/05/2014
Departure: 22:05
Arrival: 11:50
Flight number: UX92

Return Madrid(MAD) New York (JFK)(JFK)
Date: 21/05/2014
Departure: 17:30
Arrival: 20:05
Flight number: UX91

Price per adult: 323 (x1) €

Taxes: 430.63 €
Discounts: -12 €
Total: 741.63 € *

* Service Fee not included

Reservations
902 401 501
902 401 530
Web Issues

Attachment 2

This screenshot is identical to Attachment 1, but with a tooltip visible over the 741.63 € price. The tooltip text reads: "[return flight (323.00 €) + Taxes (430.63 €) - Discounts (12 €)]".

Reservation Summary

Outbound New York (JFK)(JFK) Madrid(MAD)
Date: 14/05/2014
Departure: 22:05
Arrival: 11:50
Flight number: UX92

Return Madrid(MAD) New York (JFK)(JFK)
Date: 21/05/2014
Departure: 17:30
Arrival: 20:05
Flight number: UX91

Price per adult: 323 (x1) €

Taxes: 430.63 €
Discounts: -12 €
Total: 741.63 € *

* Service Fee not included

Reservations
902 401 501
902 401 530
Web Issues

Attachment 3

VERY IMPORTANT

You are making a reservation with origin or destination in the USA, UK or CUBA. You may also be making a booking for a flight that fly over the USA airspace. For this reason and following the security program of those countries it will be obligatory to included the minimal information required (as follow):

- Write the names and surnames of the passengers exactly as they appear on their respective passports. The use of diminutives, initials or translations is not permitted if these do not appear on the passport.
- Include additional information: date of birth.

Please note that Air Europa is not responsible for passenger data entered.

Reservation Summary

Outbound New York (John F Kennedy)
Madrid
Date: 14/05/2014
Departure: 22:05
Arrival: 11:50
Flight number: UX92

Return Madrid
New York (John F Kennedy)
Date: 21/05/2014
Departure: 17:30
Arrival: 20:05
Flight number: UX91

Price per adult: 323.00 EUR
Taxes: 430.63 EUR
Discounts: -12 EUR
Total: 741.63 EUR

* Service Fee not included

Buyer's Details

Title: * [dropdown] Document Type: * Passport [dropdown]
Name: * [text] Number: * [text]
Surname 1: * [text] Country of issue: * Spain [dropdown]
Surname 2: * [text] Mobile No.: * Spain [dropdown]
E-mail: * [text]
Confirm e-mail: * [checkbox]
 Check this box if you are one of the passengers who will fly.

Complete data of Adult 1

Title: * [dropdown] Document Type: * Passport [dropdown]
Name: * [text] Number: * [text]
Surname 1: * [text] Expiry date: * [text]
Surname 2: * [text] Country of issue: * Spain [dropdown]
Are you under 18 years old?
Date of Birth: * [text]
Telephone No.: * Mobile [dropdown] Spain [dropdown]

Attachment 4

Selected Flights

| Origin | Destination | Date | Departure Time | Date | Arrival Time | Flight number | Class |
|---------------------------|---------------------------|------------|----------------|------------|--------------|---------------|-------|
| New York (John F Kennedy) | Madrid | 14/05/2014 | 22:05 | 15/05/2014 | 11:50 | UX92 | T |
| Madrid | New York (John F Kennedy) | 21/05/2014 | 17:30 | 21/05/2014 | 20:05 | UX91 | T |

Collection types: Electronic Ticket (24 EUR)

Supplements

Seats: From 10 EUR
Baggage: From 50.00 EUR

| Passengers | Seats | Baggage | PRICES |
|------------|----------|----------|----------|
| BOB JONES | 0.00 EUR | 0.00 EUR | 0.00 EUR |

Price and Total to be paid

| Passengers | Fare | Taxes | Service Fee | Supplements | Discounts | Total costs |
|---------------------|------------|------------|-------------|-------------|-------------|-------------------|
| BOB JONES | 323.00 EUR | 430.63 EUR | 24.00 EUR | 0.00 EUR | - 12.00 EUR | 765.63 EUR |
| TOTAL AMOUNT | | | | | | 766.63 EUR |

Conditions

I have read and accept reservation conditions, fare conditions, Dangerous Good, General Conditions of Carriage applicable to my flight and Personal Data Protection Policy that regulates this registration.

Certificate of Service

I hereby certify that I have, this 16th day of December, 2013 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

| | |
|-------------------------|--------------------------|
| Aaron A. Goerlich, Esq. | agoerlich@ggh-airlaw.com |
| Samuel Podberesky, Esq. | sam.podberesky@dot.gov |

/s/

Benjamin Edelman