

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-2017-\_\_\_\_  
)  
American Airlines )  
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**COMPLAINT OF BENJAMIN EDELMAN**

Comments with respect to this document should be addressed to:

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Dated: March 20, 2017

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**COMPLAINT OF BENJAMIN EDELMAN**

1. This complaint arises out of false statements by American Airlines in the marketing of air travel, including persisting in substantially the same false statements of “tax” about which I previously complained as early as 2011, and which AA has repeatedly promised to have ceased.

**I. AA PERSISTS IN FALSELY DESCRIBING ITS CARRIER-IMPOSED CHARGES AS “TAX”**

2. AA persists in telling customers, systematically and through automated software, that their journeys included high charges for “tax” that is actually an AA fee.

**A. AA Falsely Describes Its Carrier-Imposed Charges As “Tax” On Ordinary Paid Tickets**

3. I recently purchased a ticket from AA for travel from Amsterdam to Boston to Brazil and return. After ticketing, I used the AA.COM “Your Trip” feature to look at AA’s characterization of the price of the ticket. I was surprised to see it presented as follows:

## Cost summary

Your total <b>5,169.62 USD</b> <small>Includes all taxes and carrier-imposed fees</small>	Passenger x 1	4,551.00 USD	<a href="#">Bag and optional fees</a>
	Taxes	618.62 USD	<a href="#">Reservation and tickets FAQs</a>
	Carrier-imposed fees	0.00 USD	<a href="#">Price and Tax Information</a>
	<b>Total (all passengers)</b>	<b>5,169.62 USD</b>	

(See also Exhibit 1, presenting the full screen on which this display appeared.) Not the claim of “carrier-imposed fees” of “0.00,” while “taxes” are described as “618.62.”

4. I clicked the Price and Tax Information link and was taken to the display shown below:

The screenshot shows a browser window titled "Base fare, taxes and carrier-imposed fees - Mozilla Firefox". The address bar shows the URL: https://www.aa.com/mvc/tax/taxDisplay?bookingPathStatId=<c:out value="/>. The page title is "Base fare, taxes and carrier-imposed fees". The main heading is "Adult fare, taxes and carrier-imposed fees". Below this is a table listing various fees and taxes.

Base fare	\$4,551.00 USD Per person
AIRPORT SECURITY CHARGE (NETHERLANDS)	\$11.20 USD
PASSENGER SERVICE CHARGE (NETHERLANDS)	\$13.80 USD
US APHIS USER FEE (UNITED STATES)	\$7.92 USD
PASSENGER FACILITY CHARGE (UNITED STATES)	\$9.00 USD
US FEDERAL INSPECTION FEE (UNITED STATES)	\$14.00 USD
US SECURITY FEE (UNITED STATES)	\$11.20 USD
US CUSTOMS USER FEE (UNITED STATES)	\$11.00 USD
OTHER TAXES	\$540.50 USD
<b>Total Adult taxes and carrier-imposed fees</b>	<b>\$618.62 USD</b> Per person

Close

Note the claim of “other taxes” of “\$540.50 USD.” On information and belief, there are no such “other taxes” imposed by any government, airport, or similar outside authority. On information and belief, the entire \$540.50 is a carrier-imposed surcharge.

5. The top of the AA.COM “Your Trip” screen includes a button labeled “Print trip and receipt.” I clicked it and was taken to the screen shown in Exhibit 2. This screen repeated the claim of “Taxes” of “\$618.62 USD” and the claim of “Carrier-Imposed Fees” of “\$0.00 USD.” See right panel of the receipt. On information and believe, the “Taxes” claim is incorrect because there are no genuine taxes of that amount imposed by any government, airport, or similar outside authority. On information and belief, \$540.50 of the \$618.62 is a carrier-imposed surcharge.

6. These practices are false and deceptive and violate 14 CFR 399.84(a) and 49 USC § 41712.

**B. AA Falsely Describes Its Carrier-Imposed Charges As “Tax” On “Vacation” Tickets**

7. I recently assisted a friend in purchasing a travel through AA Vacations.<sup>1</sup> AA Vacations is a department of AA that provides combinations of airfare and car and/or hotel at a single package price. Reviewing AA confirmation emails after purchase, I found that AA overstated the “tax” that applied to her trip. In particular, the confirmation claimed that her BOS-LHR, AMS-LHR-BOS itinerary entailed “Tax” of \$1,199.76. See screenshot below, taken from a confirmation email that AA sent her upon purchase:

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<sup>1</sup> My friend prefers not to be listed by name in the public complaint. The facts of her experience do not depend on her identity, but I can provide her identity and her full travel documents to AA and DOT upon request.

TOTAL AMOUNT	
	<b>All prices are quoted in US dollars</b>
	<b>Price exclusions:</b> For car rental, additional taxes and fees apply. For itineraries that include flights, checked baggage fees may apply. For hotel stays, resort fees, incidental fees and parking fees may apply.
<b>Package Price</b>	\$2,775.13
	<b>Tax Exemptions:</b> For some international destinations you may qualify for a refund of a portion of the air taxes after you've finished booking. To claim an exemption, you may be asked to show proof of residency / citizenship at the airport. <a href="#">Tax exemptions and refund information.</a>
	<b>Additional Baggage Fee Detail:</b> <a href="#">Baggage &amp; Optional Service Charges</a>
<b>Tax</b>	\$1,199.76
<b>Payments Received</b>	\$3,974.89
<b>Balance Due</b>	<b>Paid In Full (Balance is due 45 days prior to arrival)</b>

8. AA did not provide an itemization of the supposed “Tax,” neither in this confirmation nor at AA.COM or anywhere else that I could find. Using the public tool ITA Matrix, I found that an AA premium-cabin round-trip from Boston to London or Amsterdam carried a \$956 surcharge which ITA described as “AA YR surcharge (YR).” On information and belief, that \$956 is the majority of the \$1199.76 AA calls “Tax,” although this carrier-imposed surcharge is not actually a “Tax.”

9. Notably, the receipt emailed by AA was the first time I received any information about fare versus tax for this itinerary. I booked this itinerary by phone because it included requirements that the AA Vacations web site cannot accommodate (including an open jaw between LHR and AMS). The telephone agent made no mention of fare versus tax, nor for that matter did she separately itemize the airfare versus hotel.<sup>2</sup> Only in the AA Vacations email receipt does a passenger begin to learn the components of the cost. AA’s overstatement of “tax” is therefore particularly likely to leave consumers with an inaccurate understanding of the true reasons for the price of their journeys or the role of airline fees versus government taxes in causing high prices.

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<sup>2</sup> I retained a digital call recording that confirms that the AA agent made no such statement.

10. These practices are false and deceptive and violate 14 CFR 399.84(a) and 49 USC § 41712.

## **II. LEGAL ANALYSIS**

11. AA’s statement of “tax” are inaccurate and literally false. There should be no serious dispute that these false statements are unlawful. The impermissibility of AA’s misstatements is particularly clear in light of unambiguous DOT guidance and AA’s two consent decrees on this very subject, as discussed further below.

12. AA’s misrepresentations undermine public policy and accountability. When AA tells consumers that taxes are larger than is actually the case, AA invites passengers to conclude that there is no point trying to shop around, for this journey or future journeys, as any other carriers would surely have to charge the same tax (if truly imposed by a government or airport). Meanwhile, AA’s false statements ask passengers to blame governments or airports for high fees that are, by all indications, disproportionate to the work performed or service provided. Conversely, AA’s misrepresentations tell consumers that AA’s airfare is lower than is actually the case, which may lead passengers to be more accepting of inferior service, cramped seats, or other deficits.

13. AA is a sophisticated carrier that should be held to the highest standards of truth in marketing, business records, and customer communications. On information and belief, by reasonable measures including revenue, passengers carried, and passenger-miles flown, AA is the largest airline in the world.

14. I have previously reported to the DOT that AA widely characterized carrier-imposed fees as “taxes.”<sup>3</sup> AA offered a variety of defenses including claiming (contrary to the dated evidence in my filings) that the problems predated the start of DOT enforcement in this area, that the errors were harmless, and that I was never deceived because I am sophisticated. DOT considered and rejected each of these defenses. AA entered a December 6, 2013 consent order (Order 2013-12-6) promising “to cease and desist from similar violations” of “providing consumers verbal and written statements that refer to the total amount of taxes and carrier-imposed surcharges for a given flight as ‘taxes.’”

15. Exactly one day after the AA consent order was publicly posted, I filed a second complaint showing that, far from having ceased the misconduct as it had promised, AA in fact was continuing to mischaracterize carrier surcharges as “tax” on award bookings at AA.COM. (DOT-OST-2013-0213.) AA again offered defenses including correct information displayed elsewhere, the incorrect information appearing on a screen that only some customers check, and the problem being limited to award tickets. In a consent decree of December 12, 2016 (Order 2016-12-12), DOT again rejected AA’s defenses and held that enforcement action was warranted in light of the prior enforcement order, AA’s size and sophistication, and the likelihood that the violation would have continued had I not reported it. AA again promised to cease.

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<sup>3</sup> See DOT-OST-2013-0024 Complaint (alleging false statements by AA telephone reservations staff on ordinary paid bookings, false statements by AA telephone reservations staff on special fares, false statements by AA telephone reservations staff on award bookings, false statements by AA staff during reaccommodation after cancellation, false statements by AA web sites in selling around-the-world tickets, and false statements in passenger correspondence), reply (alleging false statements by AA telephone reservations staff on award bookings and cancellations, false statements by AA telephone reservations staff on ordinary paid bookings, and false statements in AA.COM award “hold” emails), and supplemental filing (alleging false statements by AA telephone reservations staff on award bookings, false statements by AA telephone reservations staff on ordinary paid bookings, and false statements by AA telephone reservations staff on special fares).

16. Notice the pattern of misconduct. For a period now stretching to five years, AA staff and systems have repeated substantially the same misrepresentation, in each instance misrepresenting an airline fee as a “tax.” The problems extended throughout AA’s operation, including not just ordinary telephone reservations agents but special fares agents, customer correspondence staff, AA.COM web site templates and email templates. The misrepresentation continues years after AA was amply on notice of the problem and now years after AA first promised DOT to cease this misconduct.

17. Indeed, American specifically promised DOT that it had *already* fixed customer receipts to provide accurate information. See American’s March 22, 2013 answer: “American **has already** taken steps to address the possibility that a consumer would not be correctly advised of the nature of any carrier imposed fee” (page 3, emphasis added), “American’s receipts **now reflect** the fare, the amount of taxes and carrier imposed fees, and the total ticket price” (page 6, emphasis added). American then claimed the receipt errors “have long since been addressed” (page 6), when in fact they are continuing four years later.

18. AA’s conduct should be treated as intentional. AA has sought to classify its misstatements as unintentional and therefore less blameworthy, variously characterizing its false statements about tax as “nonconsequential mislabeling” (March 22, 2013 answer, page 2), “not deceptive” (same), “inadvertent” (page 3), “unintended confusion” (page 9), “unintentional misstate[ment]” (page 10), “mistake” (page 10), “code omission” and “incorrect display” (January 7, 2014 answer, page 2), “erroneous display” and “misstatement” (page 3). But AA has been on notice of these problems for more than five years, beginning with my December 31, 2011 letter to then-AA General

Counsel Gary Kennedy. This duration is more than sufficient for AA to properly train staff, adjust call center scripts, and, crucially, correct any errors in web site programming and email templates. DOT guidance of February 21, 2012 offered a 60 day period for carriers to cease false statements in this area. Having failed to do so in more than *five years*, even after claiming to have already done so and even after twice officially promising DOT to do so, AA should expect little leniency.

19. Greater civil penalties are required to motivate AA to cease the false statements at issue. AA’s continued false statements should be understood as resulting from the company’s considered and intentional decision to focus its legal and management efforts elsewhere, rather than fully searching for and remediating the false statements presented here. For example, with greater interest in fixing these problems, AA could have hired outside auditors to check the entirety of its customer-facing operations, to scan outgoing emails, to review message templates, and more. AA’s actions indicate that the company views DOT fines as just a cost of doing business, and that AA thinks that the management or technical effort required to find and fix all its false statements is more costly than the DOT fines likely to result. Greater civil penalties are appropriate in order to reiterate the seriousness of both the underlying violations and the remarkable continuation of the violations even after promising DOT that the problems were in the past.

20. I ask that the Department of Transportation:
- (1) Exercise its authority under 49 USC 41712 to open an investigation of AA for having engaged in the unfair or deceptive practices described above;
  - (2) Order American Airlines to refund to ticket purchasers all monies represented to ticket purchasers as “taxes” or government-imposed fees, but not actually remitted to governments;
  - (3) Require AA to examine the entirety of its web site, email templates, customer service training materials, customer relations template replies, and other customer-facing statements in search of similar misrepresentations, and to report to DOT the methods it used for such examination and any further problems it found; and
  - (4) Impose appropriate civil penalties, in an amount reflecting the gravity of the misrepresentation in light of prior DOT orders in which AA promised that this problem was resolved and would not recur.

Respectfully submitted,  
/s/  
Benjamin Edelman

Attachment 1

**Your trip**  
 Record locator: [REDACTED]      Itinerary: Thursday, March 2, 2017  
 Status: Ticketed

Cancel trip   Change seats   Email trip   Send to calendar   Print trip and details

**Depart Amsterdam, Netherlands to Boston, MA**  
 Sunday, [REDACTED] 2017

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Business	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	First	[REDACTED]

**Depart New York, NY to Goiania, Brazil**  
 [REDACTED]

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	First	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Economy	[REDACTED]

**Depart Goiania, Brazil to Miami, FL**  
 [REDACTED]

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Economy	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Business	[REDACTED]

**Depart Boston, MA to Amsterdam, Netherlands**  
 [REDACTED]

Flight	Depart	Arrive	Travel time	Aircraft	Class	Seats
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	First	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Business	[REDACTED]

**Cost summary**

<b>Your total</b>	Passenger x 1	4,001.00 USD	<a href="#">Bag and optional fees (F)</a>
<b>5,169.62 USD</b>	Taxes	618.62 USD	<a href="#">Reservation and ticket FOCs (F)</a>
	Carrier-imposed fees	0.00 USD	<a href="#">Price and Tax Information (F)</a>
	<b>Total (all passengers)</b>	<b>5,169.62 USD</b>	

Includes all taxes and carrier-imposed fees.

Exhibit 2

Browser tabs: Your trip – View reservatio... | Print trip and receipt – Yo... | +

Browser address bar: American Airlines, Inc. (US) | https://www.aa.com/reservation/printitinerary.do?forward | Search

**AmericanAirlines®** Print

PNR redacted      barcode redacted

AA RECORD LOCATOR: [REDACTED]      [REDACTED]      ← Get your boarding pass faster! Scan this barcode at any American Airlines Self-Service Machine.

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**Multiple Destinations**  
1 Adult travel dates redacted  
Sunday [REDACTED] – Tuesday [REDACTED], 2017

**AA Record Locator** [REDACTED]      **Reservation Name** **ams-bos-gyn**

Your record locator is your reservation confirmation number and will be needed to retrieve or reference your reservation.      Status: Ticketed Mar 02, 2017

**Flight information**

Flight	Depart	Arrive
itinerary redacted		

Flight	Depart	Arrive
[REDACTED]		

Flight	Depart	Arrive
[REDACTED]		

Flight	Depart	Arrive
[REDACTED]		

**Total Paid:**  
**\$5,169.62 USD**

**Fare Amount**  
Adult  
1 x \$4,551.00 USD \$4,551.00 USD

**Taxes & Carrier-Imposed Fees**

Taxes \$618.62 USD  
Carrier-Imposed Fees \$0.00 USD

**Flight Subtotal**  
**\$5,169.62 USD**

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**Receipt**

PASSENGER	TICKET NUMBER	FREQUENT FLYER NUMBER	FARE	EQUIV FARE	Tax/Fee/Charge	TICKET TOTAL
EDELMAN,BENJAMIN	001 [REDACTED]	[REDACTED]	&euro;4,551.00 EUR	4551.00 USD	618.62	5169.62
Payment Type: AMERICAN EXPRESS ***** [REDACTED] last four digits of card number redacted					<b>Total</b>	<b>\$5,169.62 USD</b>

Some fares purchased on AAdvantage participating airlines are not eligible for mileage accrual. View eligible booking codes and mileage accrual rates by airline on the AAdvantage Airline Partner page.

**Certificate of Service**

I hereby certify that I have, this 20th day of March, 2017 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Howard Kass	howard.kass@aa.com
Robert Silverberg, Esq.	rsilverberg@sgbdc.com
Blane Workie, Esq.	blane.workie@dot.gov
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/s/

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Benjamin Edelman