

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-2013-0024 |
| |) | |
| American Airlines, Inc. |) | |
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| -----) |) | |

SUPPLEMENTAL FILING OF BENJAMIN EDELMAN

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Dated: September 20, 2013

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I. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as “Tax” in Quoting Award Travel 3

II. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as “Tax” in Quoting Ordinary Paid Travel..... 4

III. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as “Tax” in Quoting Around-TheWorld Travel 5

IV. American Employees Continue to Charge Telephone Ticketing Fees without Disclosure to Consumers and without Consumer Consent..... 6

V. Contrary to AA’s Own Statements, AA.COM Continues to Present Fuel Surcharges Within “Taxes & Fees” and not Fare 7

SUPPLEMENTAL FILING OF BENJAMIN EDELMAN

1. I offer this supplemental filing to provide additional evidence, postdating my February 4, 2013 complaint and April 5, 2013 reply, showing ongoing American Airlines price advertising practices that I believe to be impermissible.

2. American has argued that “the conduct complaint of has been addressed” (Answer at p.2) and that no DOT response is necessary or appropriate. In contrast, I have argued that the problems are ongoing, including as detailed in this supplemental filing.

I. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as “Tax” in Quoting Award Travel

3. American employees continue to mischaracterize carrier-imposed surcharges as “tax” in quoting award travel.

4. On August 31, 2013, I called American Airlines telephone reservations to make an award booking for BOS-LHR. The representative quoted “tax” that was primarily a carrier-imposed surcharge. From the digital call recording (emphasis added)¹:

AA recording: Welcome to the Advantage Executive Platinum Desk! ... This call may be recorded.

Agent: American Airlines (inaudible).

Edelman: Yes, hi, for a new award travel, please.

Agent: Okay, Mr. Edelman, traveling from?

Edelman: From Boston.

Agent: Okay.

Edelman: To London.

Agent: What day are you looking at, and for how many passengers?

Edelman: One passenger, September 22, first class please.

Agent: Let me check availability, first class.

Edelman: There’s just BA nonstop on that route now, so that would be fine.

Agent: I am checking availability on BA. The 10:15 in the evening flight is available; I have the last first class seat.

Edelman: Good. That would be perfect. Thank you.

Agent: Is there a return flight also?

Edelman: No, just one way. And the passenger is a friend, I’ll give you the name when you’re ready.

...

Agent: And do you want me to automatically deduct 62,500 [miles] from your account, Mr. Edelman?

Edelman: Yes, please.

Agent: I am ready for a credit card for his tax of four hundred thirty eight dollars and twenty cents, plus the twenty five dollar handling fee for a total charge of four hundred sixty three twenty.

¹ I have full call recordings and can provide the original MP3 files upon request. I have posted audio recordings to <http://www.benedelman.org/airfare-advertising/americanairlines.html>.

5. The majority of the quoted “tax” is actually a carrier-imposed surcharge, which is not a tax.

6. The agent quoted “tax” without any inquiry or request from me. The agent was the first to use the word “tax,” and the agent did so entirely unprompted. These facts make inapposite the portion of the AA’s Response, April 19, 2013 at p.2, in which AA argues that an agent’s false statement of “tax” is not cause for concern, or is cause for reduced concern, if the agent’s false statement occurs only in response to a customer’s specific inquiry.

7. I purchased this ticket with the genuine intent that a friend use it, and I expect that he will in fact use it later this month.

II. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as “Tax” in Quoting Ordinary Paid Travel

8. American employees continue to mischaracterize carrier-imposed surcharges as “tax” in quoting ordinary paid travel.

9. On June 29, 2013, I put an itinerary on hold on AA.COM at the lowest available fare, then called American telephone reservations staff to request that the ticket be priced in a “B” fare. (I sought to use a restricted upgrade certificate not valid on the initial fare.) I was quoted “tax” that was primarily a carrier-imposed surcharge. From the digital call recording (emphasis added):

AA recording: Welcome to the Advantage Executive Platinum Desk! ... This call may be recorded.

Agent: Hello, Mr. Edelman?

Edelman: Yes, could I give you a record locator?

Agent: Yes, go ahead.

Edelman: [reads record locator]

Agent: Thank you sir. This is for yourself, party of one. How can I help you?

Edelman: I'd like to upfare this to the lowest available fare in booking class B, like bravo.

Agent: All segments?

Edelman: All segments, please.

Agent: One moment.

Agent: I have that priced at one thousand nine hundred ninety five dollars and forty cents.

Edelman: Could you confirm the fare and the tax please?

Agent: The fare, yes, one thousand nine hundred ninety five dollars and forty cents is the total fare. The base fare is one thousand four hundred thirty five dollars. Taxes are five hundred sixty dollars and forty cents. This is in US dollars.

Edelman: Got it.

10. I purchased the ticket immediately thereafter, in the same phone call, and I began travel on the ticket several days later.

11. The majority of the quoted "tax" is actually a carrier-imposed surcharge, which is not a tax.

III. American Employees Continue to Mischaracterize Carrier-Imposed Surcharges as "Tax" in Quoting Around The World Travel

12. On or about June 1, 2013, I called the AA Around The World Desk and specified flights for a first class AONE3 ticket for a colleague. I did not receive a fare quote in the initial call. Instead, consistent with standard ATW Desk practice, I was instructed to call back the next day for a fare quote.

13. On June 2, 2013, I called the AA Around The World Desk to obtain the fare quote. From the digital call recording (emphasis added):

AA recording: Welcome to the American Airlines Around The World Desk! ... This call may be recorded.

Agent: [agent name], Around The World desk. How can I help you?

Edelman: Could I give you a record locator?

Agent: Sure, you bet, just one sec. What's that record please, sir?

Edelman: [reads record locator]

Agent: OK, just a second. OK, how can I help you sir?

Edelman: I want to confirm the fare and tax, and if it makes sense, I'll ticket it please.

Agent: Fourteen thousand eight ninety five thirty seven.

Edelman: OK, could I have the fare versus the tax please.

Agent: The base fare is thirteen thousand eight oh eight, and the taxes are one oh eight seven thirty seven, for a total of fourteen eight ninety five thirty seven.

Edelman: OK, let's ticket it please.

14. The majority of the quoted "tax" is actually a carrier-imposed surcharge, which is not a tax.

15. I purchased the ticket immediately thereafter, in the same phone call, and my colleague traveled on the ticket shortly thereafter.

IV. American Employees Continue to Charge Telephone Ticketing Fees without Disclosure to Consumers and without Consumer Consent

16. The prior section transcribes the entirety of AA's telephone fare quote for the ticket there at issue. Nonetheless, AA charged my credit card both the \$14895.37 ticket I agreed to, and an additional \$25 that was not disclosed in the fare quote.

17. I first learned of the additional \$25 charge when I saw it on the e-ticket confirmation email sent after ticketing. The charge was there described as "telephone ticketing service." I also confirmed that the charge appeared on my credit card statement.

18. Thus, the total amount charged to my card exceeded the amount I was quoted and the amount I agreed to pay.

19. Throughout the call at issue, I was booking travel for another passenger, who is not Executive Platinum and is not entitled to any waiver of telephone ticketing fee. At no time did I provide my own Executive Platinum status, nor did I give the agent any reason to think that a fee waiver would apply to this ticket.

20. On or about February 10, 2012, I booked a separate around-the-world ticket for the same colleague. My contemporaneous notes indicate that I was charged a \$50 ticketing fee on that ticket, and that I was not advised of that ticketing fee during the telephone fare quote. I do not have a recording of that call, although I do have the contemporaneous emails indicating that I immediately recognized the charge as unexpected. I also have credit card records confirming that the charge occurred.

21. My experience with this ticket tends to confirm disputed allegations in my initial complaint. Recall the award booking where I claimed that AA staff did not disclose the applicable fee in the first fare quote (Complaint p.8). AA correctly noted that I have no call recording to support that claim (Answer p.12: “there is no recording of the call to verify the details of this telephone exchange ...”). My experience on this ticket is directly probative: Since AA staff failed to disclose the booking fee for this ticket, it is particularly plausible that AA staff also failed to disclose the telephone fee for the ticket I described at Complaint p.8.

22. AA argued that my complaints arise solely out of American’s alleged failure to “accurately distinguish between taxes and airline imposed fee” (Answer p.2, emphasis added). But here my complaint alleges something American charging me an amount beyond what American quoted by telephone and beyond what I agreed to pay.

V. Contrary to AA’s Own Statements, AA.COM Continues to Present Fuel Surcharges Within “Taxes & Fees” and not Fare

23. When quoting a fare to passengers, AA.COM now presents a total “Your Trip Cost” along with an “Average Fare” and “Taxes & Fees.” See Attachment 1. Adjacent to “Taxes & Fees”, a “Price and Tax Information” link yields a popup giving more information about pricing. The resulting popup is shown in Attachment 2.

24. The popup (Attachment 2) specifically states that for international tickets, “Fares include: Base fare and carrier-imposed surcharges.” The popup clearly indicates that any carrier-imposed surcharge will be included in “fare” and not in “taxes & fees.”

25. In my example, the fare quote (Attachment 1) indicates a “fare” of \$6,859.20 and “taxes & fees” of \$657.62 for a business class itinerary MAD-LHR-MIA-EZE-JFK-MAD. On information and belief, the \$657.62 consists primarily of carrier-imposed surcharges. But the popup specifically indicated that carrier-imposed surcharges would be listed within the “Fare”.

26. The popup (Attachment 2) uses the term “additional government-imposed taxes and fees.” I do not know whether AA intends that term to have the same meaning as “taxes & fees” in the fare quote (Attachment 1). The popup appears solely in response to a user’s request for “Price and Tax Information,” and I can see no proper reason for the popup to use different terminology than page the popup purports to clarify and explain. Furthermore, the popup enumerates only bona-fide government-imposed taxes and fees – telling consumers that the entire amount in the “Taxes & Fees” section of the fare quote is in fact government-imposed taxes, although that is not the case. I believe this design is, at best, needlessly confusing and ambiguous, and probably unfair and deceptive.

VI. AA.COM Presents Contradictory Fare Quotes on a Single Page

27. I previously noted AA.COM presenting fare quotes with arithmetic errors. See <http://www.benedelman.org/airfare-advertising/americanairlines.html> at subheading “Arithmetic errors” showing a screenshot wherein AA.COM quoted a “Fare” of \$3295.72 and “Taxes & Fees” of \$327.80 – numbers which actually sum to \$3624.52, but AA.COM instead quotes a supposed total of \$3460.02.

28. I subsequently noticed AA.COM presenting other inconsistent fare quotes on a single web page. See the screenshot shown in Attachment 3 (prepared June 29, 2013), wherein AA.COM quotes a trip as “Your trip cost” of \$1589.40, but immediately below indicates “Your total price” of \$1260.60 with a possible deduction of \$100 for obtaining a certain credit card, yielding a net price of \$1160.60. As best I can tell, the ticket was never available for \$1260.60 or \$1160.60.

29. I prepared Attachment 3 from a screen-capture video showing the entire fare quote process for that ticket. I can provide the full screen-capture video in electronic form if desired.

Respectfully submitted,

/s/

Benjamin Edelman

Attachment 1

The screenshot shows the American Airlines website interface. At the top, there are navigation links for "Plan Travel", "Travel Information", and "AAdvantage". Below this is a progress bar with steps: "Find Flights", "Choose Flights", "Travelers", "Trip Options", "Select Seats", "Review & Pay", and "Finish".

The main content area is titled "Multiple Destinations" and shows a trip for 1 Adult from Wednesday, October 9, 2013, to Wednesday, October 16, 2013. The "Your Trip Cost" is \$7,516.82 USD. A link for "Baggage and Optional Charges" is provided.

The "Flight Information" section lists three flights:

| Flight | Depart | Arrive |
|---|---|---|
| American Airlines 6277 <small>Operated by British Airways</small> | Madrid (MAD) October 9, 2013 10:45 AM Travel Time : 2 h 25 m Cabin Class : Business Seat : unassigned | London (LHR) October 9, 2013 12:10 PM Booking Code : I Plane Type : 767 |
| American Airlines 6162 <small>Operated by British Airways</small> | London (LHR) October 9, 2013 01:35 PM Travel Time : 9 h 10 m Cabin Class : Business Seat : unassigned | Miami (MIA) October 9, 2013 05:45 PM Booking Code : I Plane Type : 744 |
| American Airlines 931 | Miami (MIA) October 9, 2013 11:55 PM Travel Time : 8 h 45 m Cabin Class : Business Seat : unassigned | Buenos Aires (EZE) October 10, 2013 09:40 AM Booking Code : I Plane Type : 777 |

On the right side, a pricing summary shows:

- Average Fare: \$6,859.20 USD
- Average Fare**
- Adult: \$6,859.20 USD
- Taxes & Fees**
- Adult: \$657.62 USD
- Flight Subtotal**
- \$7,516.82 USD**

Attachment 2

The screenshot shows a Mozilla Firefox browser window displaying the American Airlines website. The page title is "Passenger Type Used In Pricing".

The page content includes:

Passenger Type Used In Pricing
Passenger Type Used In Pricing reflects the lowest available fare for your selected flights.
This may differ from the Passenger Type you selected because AA.com always searches for the lowest available fare regardless of passenger type. For example, if you specified 'child', you may see 'adult' in this column because that was the lowest available fare for your selected flights.

Domestic Travel

Fares include:

- Base fare and carrier-imposed surcharges
- 7.5% U.S. government excise tax

Additional government-imposed taxes and fees included:

- September 11th Security Fee of \$2.50 per U.S. enplanement
- Airport passenger facility charges (PFCs) of up to \$18 roundtrip
- U.S. government excise tax* of \$3.90 on each domestic flight segment (defined as one takeoff and one landing)
- For Hawaii/Alaska, U.S. government excise tax of \$8.20

International/Puerto Rico/U.S. Virgin Islands

Fares include:

- Base fare and carrier-imposed surcharges

Additional government-imposed taxes and fees included:

- September 11th Security Fee of \$2.50 per U.S. enplanement
- Airport passenger facility charges (PFCs) of up to \$18 roundtrip
- Other government taxes and fees (including U.S. excise tax* and foreign taxes** based on itinerary or billing address) of up to \$240 may apply; total may vary slightly based upon currency exchange rate at time of purchase.

* U.S. government excise tax is a user tax to pay for airport construction and airway safety and operations.

Attachment 3

Customer Details | American Airlines Res... | <https://www.aa.com/reservation/selectScheduleSearchResultSubmit.do>

Home Hello, BENJAMIN English Search aa.com

American Airlines Plan Travel Travel Information AAdvantage

Find Flights Choose Flights **Travelers** Trip Options Review & Pay Finish


3. Travelers

Manchester to Boston
1 Adult
Tuesday July 2, 2013 – Wednesday February 19, 2014

Your Trip Cost: **\$1,589.40 USD**

[Baggage and Optional Charges](#)

Show Trip Details

AAdvantage  Earn **30,000** bonus miles, up to **\$100** in statement credits, and your **first checked bag free**!

Your Total Price: **\$1,260.60 USD**

| | |
|------------------------|-----------------------|
| Card Statement Credit: | \$-100.00 USD |
| | \$1,160.60 USD |

[Learn More](#)

Passenger Details

Windows taskbar: 100% battery, network, and system icons.

Certificate of Service

I hereby certify that I have, this 20th day of September, 2013 caused a copy of the foregoing Reply to be served by electronic mail on the following persons:

Robert Silverberg, Esq. rsilverberg@sbgdc.com
Samuel Podberesky, Esq. sam.podberesky@dot.gov

/s/

Benjamin Edelman