

March 25, 2012

Gary F. Kennedy
Senior Vice President and General Counsel, American Airlines
by email: [REDACTED]

RE: carrier-imposed surcharges systematically mischaracterized as "tax"

Mr. Kennedy,

Recall my letter of December 31, 2011, flagging (and providing copies of) multiple American Airlines receipts which mischaracterized carrier-imposed surcharge as "tax." In your reply of January 11, 2012, you argued that these inaccurate statements "had no effect on the fares displayed in the booking path [and] no effect on the customer's decision to purchase" because receipts arrive only after a transaction has occurred and because, you argued, accurate information was provided prior to booking.

I write to continue our discussion by providing multiple examples, including recent and ongoing examples, in which AA staff provided inaccurate information prior to booking – mischaracterizing carrier-imposed surcharge as "tax" when customers are deciding whether to purchase a given ticket.

AA Reservations Agents Mischaracterizing Carrier-Imposed Surcharge as "Tax" in Award Bookings

In my experience, AA telephone representatives systematically characterize carrier-imposed surcharges as "tax" when customers book awards that include travel on British Airways. I made two such bookings during 2011 (the first two receipts shown in Attachment 1 to my December 31, 2011 letter). To the best of my recollection, AA Reservations staff characterized the amount to be charged to my credit card as "tax." If you have access to recordings of the phone calls during which I made these bookings, perhaps you can review. In that case, I hope you'll also provide me with a copy of those recordings.

To confirm my recollection, I made three test calls to AA Reservations staff. In separate phone calls of January 14, March 20, and March 21, 2012, three AA Reservations agents characterized as "tax" the surcharges AA collects for award travel on British Airways. For example, on January 14, 2012, I made a test booking with AA Reservations for award travel BOS-LHR-BOS on British Airways in First Class. After I specified desired dates, flights, carrier, and class of service, I was advised of the number of miles and money payment that would be required. Referring to the quote presented on his computer screen, the agent told me: "it's giving me a total of 125000 miles, and taxes of 938.80." He made that statement without any prompting whatsoever from me, nor any special request from me. Similar statements occurred in my subsequent test calls. The March 20 agent advised me of "the BA taxes" and the March 21 agent told me "taxes are 347.70" (for a one-way BOS-LHR booking). As you know, each of these statements was false: the amounts at issue consist primarily of carrier-imposed fuel surcharge, not tax.

Recall that AA's standard telephone auto-attendant grants customers permission to record a call. (It says "this call may be recorded.") With that permission, I made high-quality digital recordings of each of the above-listed calls.

In your letter of January 11, you noted that a page on AA.COM mentions the possibility of surcharges on award travel (the underlined language at the bottom of your page 1). You also noted that a "Frequently

Asked Questions” page mentions “the British Airways fuel surcharge.” These statements do not cure the agents’ misstatements. For one, award travel on other carriers can only be booked by telephone, not via AA.COM or, to the best of my knowledge, in any other way. As a result, customers have little reason to look to AA.COM for information about surcharges on award travel. Furthermore, when an AA Reservations agent provides a personalized fare quote to a customer, with specific flights in response to the customer’s request, the provisions of oral quote necessarily supersede any general statements on AA.COM to the extent that the materials conflict. That supersession is particularly clear when the statements on AA.COM are so vague (“varies”) while the agent’s statement is specific (“tax” of a precise dollar amount).

Meanwhile, the information on AA.COM is at best inconsistent. For example, while looking for the pages you cited, I found the “Making Award Reservations” page at <http://www.aa.com/i18n/AAAdvantage/redeemMiles/makingAwardReservations.jsp> which at heading “Making Flight Award Reservations on the oneworld Airlines or other AAdvantage Participating Carriers” mentions only “applicable taxes and security fees” but says nothing about fuel surcharges or other carrier-imposed surcharges. So even a customer who diligently reviews AA.COM is told, incorrectly, that the applicable charges on award travel are genuine government/airport “taxes and security fees” without mention of any carrier-imposed surcharges.

On Certain Paid AA Tickets, AA Staff Continue to Mischaracterize Carrier-Imposed Surcharges as Tax

On February 10, 2012, I purchased a Circle Pacific ticket from the AA Around The World Desk for my colleague D [REDACTED] M [REDACTED]. The agent quoted the fare (more than \$12,000) and “tax.” Mindful of the prospect of carrier-imposed surcharges mischaracterized as tax, I specifically asked the agent “Are those genuine taxes, or fees?” The agent replied: “Taxes.” (These quotes are my recollections. I was unable to make a recording of this call, but I was thinking about taxes versus carrier-imposed surcharges and I therefore noted the agent’s statements with extra care. Perhaps you can obtain a recording.) Via a subsequent written inquiry to AA Customer Relations, I learned that the amount characterized as “tax” actually included \$364 of “fuel surcharge.” Had I known that the quoted price included carrier-imposed surcharges, I would have considered another routing, carrier, or fare in order to reduce or avoid such surcharges.

To obtain further documentation of AA Around The World Desk staff mischaracterizing carrier-imposed surcharges as tax, on March 21 I requested a new ticket following the same itinerary Mr. M [REDACTED] booked. On March 22 I called back (as instructed) to receive a fare quote. (OneWorld circle fares require next-day fare quotes.) The March 22 agent told me: “The base fare is 15204 even, the taxes are 669.03.” Based on my correspondence with AA Customer Relations as to the pricing of Mr. M [REDACTED] ticket, I am confident that the quoted \$669.03 of “taxes” included a fuel surcharge of more than \$350. Because AA’s telephone auto-attendant granted me permission to record the call, I did so, and I have this recording on file.

Paid Tickets Previously Booked by Telephone with AA Reservations

In your letter of January 11, you describe the messages that might have appeared on screen had I used AA.COM to purchase certain travel to India. But in fact I was unable to purchase this ticket on AA.COM due to its complexity and my desired routing. I therefore ticketed this itinerary via AA telephone

reservation agents. The agents systematically told me of “fare” and “tax” but rarely if ever used the words “fuel surcharge,” “surcharge,” or any other label suggesting that a portion of the quoted “tax” was actually carrier-imposed surcharge. Your analysis of information that could have appeared on AA.COM is therefore inapplicable to this booking.

When AA’s telephone agents quoted amounts to me as “tax,” I believe those amounts included carrier-imposed surcharges in the amounts detailed in our prior correspondence. This belief is supported by my general recollection that tax seemed high on that ticket. This belief is also supported by the contemporaneous receipt (provided with my December 31 letter to you) which indicated “tax” of \$792. On this complicated ticket, I reviewed my e-ticket receipt with great care, and I believe I would have noticed had AA the receipt shown an amount of “fare” and “tax” substantially different from what I had been quoted by telephone.

I do not have a recording of the call at issue. If you have access to recordings of the phone call during which I made this booking, perhaps you can review. In that case, I hope you’ll also provide me with a copy of that recording.

Separately, I continue to doubt whether AA.COM price advertisements at all times on all itineraries included carrier-imposed surcharges within “fare” and never within “tax” (as you claimed in your January 11 letter to me). My prior letter to you shows that AA electronic ticket receipts and Customer Relations correspondence both made errors in this regard. It would be remarkable if ticket receipts and Customer Relations staff made these errors (often or, in some time periods, always), but AA.COM was always accurate on the very same questions. In any event, I am continuing to search for alternative sources of screenshot proof – screenshots that I did not ordinarily have reason to retain, but that I believe others retained.

AA Staff Continue to Mischaracterize Carrier-Imposed Surcharges as Tax when Handling Cancellations

I have been in touch with multiple customers who have conveyed to me, in specificity, their experience of AA telephone representatives mischaracterizing carrier-imposed surcharges as “tax” in the course of providing reaccommodation after flight cancellation. They have experienced these problems on both paid and award tickets.

As you know, there have recently been multiple significant cancellations in the AA network (including ORD-DEL and JFK-BUD) and in OneWorld (such as MAD-JNB). In each instance, a natural alternative routing includes transportation in whole or in part on British Airways.

I do not know whether AA would be within its rights to require that a customer pays a carrier-imposed surcharge when a customer is rebooked on British Airways as a result of a flight cancellation. But I am confident that AA may not mischaracterize British Airways surcharges as “tax” in the course of a rebooking or a proposed rebooking.

Because multiple independent customers have told me of inaccurate statements by AA telephone agents in this regard, and because AA telephone agents have mischaracterized fuel surcharge as “tax” in multiple other contexts (as detailed above), I find the customers’ reports credible.

I have a means to contact some customers who have reported these problems. I can provide these customers' contact information if AA agrees that refunds are required in this circumstance.

AA E-Ticket Confirmations Continue to Separate Carrier-Imposed Surcharge from Fare

AA's web site now presents carrier-imposed surcharges as part of the "fare." Indeed, in the AA.COM screenshot I showed in Attachment 3 to my December 31 letter, AA specifically affirms that "Fares include base fare and carrier-imposed surcharges." The best interpretation of this statement is that the quoted definition of "fares" applies – by all indications, the standard meaning of that term according to AA (as well as DOT) – applies across AA's communications with passengers, including web site statements as well as e-ticket confirmations. Nonetheless, AA's standard e-ticket confirmations continue to place carrier-imposed surcharges in a box labeled "tax/fee/charge." For example, for a recent transatlantic ticket I booked for a colleague on AA.COM, AA.COM quoted "fare" of \$1311.00 and "taxes & fees" of \$160.40 – but the e-ticket confirmation email specified "fare" of \$815.00 and "tax/fee/charge" of \$665.40.

Having affirmatively promised (in the manner shown in my prior Attachment 3) that fares "include ... carrier-imposed surcharges" and having quoted the fare in that way on AA.COM, I believe AA ought not separate the carrier-imposed surcharge into a separate box for purposes of a e-ticket confirmation. Rather, the e-ticket confirmation should match the statements provided in the purchase process and should comply with all the commitments AA provided during the purchase process (including AA's affirmative representation that "fares include base fare and carrier-imposed surcharges").

I credit that most customers do not ordinarily rely on e-ticket receipts when making purchases. But AA should characterize all charges accurately, both before and after purchase. Furthermore, because an e-ticket receipt is a customer's official written record of a purchase, it is important that these documents be accurate. Finally, I believe the difference may be significant for some purposes, including purposes that are difficult to anticipate.

My Recent Correspondence with the Department of Transportation

Disheartened by your January 11 message, I elected to alert the Department of Transportation to my concerns. In a January 14 complaint to DOT, I flagged AA and three other OneWorld carriers mischaracterizing carrier-imposed surcharges as tax (along with two non-OneWorld carriers and several online travel agents engaging in similar practices). I believe my complaint was the impetus for the DOT's February 21, 2012 notice on these and related subjects.

My January 14 complaint to DOT also flagged unusual intermediate price advertising on AA.COM. In particular, I showed AA.COM regularly advertising one-way transatlantic fares as low as "\$41" while the return segment was systematically quoted at \$450 or more. Meanwhile, I pointed out, transatlantic travel originating Europe quoted the originating westbound segment at low prices like \$41 – particularly strange since those same segments had been presented at \$450+ for US-originating customers. I now believe these price quotes resulted from a carrier-imposed surcharge being bundled with the return fare quote. No doubt you noticed the DOT's response critiquing these practices as "intend[ing] to bait the passenger with an unrealistically low outbound fare" which the DOT said is "unfair and deceptive."

The DOT has indicated that it remains concerned about carrier practices in this area. Because I consider this an important subject of public policy, I am considering a further complaint to DOT (on the matters detailed herein as well as other AA practices pertaining to price advertising, fees, and charges without proper disclosure or any disclosure). However, I would prefer to achieve resolution directly with AA. I regret that we were unable to reach such resolution in January. Perhaps the additional information provided herein will help you better understand the scope and import of the practices at issue.

Resolution

I have offered compelling evidence that AA staff have mischaracterized carrier-imposed surcharges as “tax” on both paid and award tickets. I have further shown that these mischaracterizations permeate AA’s operations, including telephone reservations for both paid and award travel, receipts for both paid and award travel, reaccommodation subsequent to flight cancellation, customer relations correspondence, and statements on AA.COM. I have also shown that these mischaracterizations are ongoing. In response to the claim in your January 11 letter that the mischaracterizations occurred only after purchase, I have shown that these mischaracterizations occur both before and after ticket purchase. In light of this additional information, I think it is clear that the problem is larger than your January 11 letter claimed. Now that I have demonstrated mischaracterizations occurring before ticket purchase, it is also clear that I was harmed by these mischaracterizations.

I believe it would be an unfair and deceptive practice, within the meaning of 49 USC §41712, to characterize (prior to purchase and/or after purchase) as “tax” a fee that is not required by any law or regulation, and that is not remitted to any government, airport, or similar authority. When such a mischaracterization occurred prior to purchase (or in another circumstance where a customer plainly relies on the quoted amount, such as during the course of reaccommodation after a flight cancellation), I believe the proper course of action is, at the least, to provide a refund to any affected customer upon that customer’s written request. This letter constitutes my request. You may send a refund check to the address shown above.

Regards,

Benjamin Edelman

