



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 5th day of May, 2015

Third Party Complaint of

Benjamin Edelman

v.

SriLankan Airlines Limited

**Violations of 49 U.S.C. § 41712 and
14 C.F.R. § 399.84**

Docket DOT-OST-2014-0230

Served May 5, 2015

CONSENT ORDER AND ORDER OF DISMISSAL

On December 23, 2014, Benjamin Edelman (the Complainant) filed a third-party complaint under 14 C.F.R. § 302.404 against SriLankan Airlines Limited. The Complainant alleges that SriLankan Airlines violated the Department's full-fare advertising rule by misrepresenting carrier-imposed surcharges as "taxes" during the online booking process. He contends that this violates 14 C.F.R. § 399.84(a) and constitutes an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712.

This order finds that SriLankan Airlines violated 14 C.F.R. § 399.84(a) and committed unfair and deceptive trade practices in violation of 49 U.S.C. § 41712 by including a carrier-imposed fee within an amount described as "taxes" on its U.S.-directed website. In addition, the order directs SriLankan Airlines to cease and desist from further similar violations of the cited statute and rule, assesses a compromise civil penalty of \$20,000, and dismisses the complaint filed in this docket.

The Complaint

The Complainant states that on December 22, 2014, he used SriLankan Airlines' U.S.-facing website to request economy class travel from New York City to Colombo, Sri Lanka. He provided screenshots indicating that the site displayed a price of \$954.00 plus "taxes" of \$587.60. He asserts that there is no "tax" of \$587.60 for this ticket. Further, he provided a screenshot of a pop-up window that appears after clicking the word "taxes." That pop-up

window provides a breakdown of the \$587.60, which is labeled as “total taxes.” The largest item in the breakdown is listed as “Surcharge (YQAP)” and is valued at \$500.00. He alleges that SriLankan Airlines is mischaracterizing the carrier-imposed “Surcharge (YQAP)” as a “tax” in violation of the Department’s regulations. The Complainant asks the Department to investigate these practices, to order SriLankan Airlines to issue refunds to ticketed purchasers, to impose civil penalties, and to refer this matter to appropriate U.S. and foreign tax authorities.

Answer of SriLankan Airlines

SriLankan Airlines filed its answer on January 16, 2015. SriLankan Airlines contends that, upon receiving the complaint, it took immediate corrective action. SriLankan Airlines contacted its third-party website provider and instructed it to modify the carrier’s online reservation system to comply with the Department’s regulations. Modifications were completed by January 15, 2015. SriLankan Airlines argued that enforcement action is not warranted in this case because any mischaracterization of a tax, fee, or surcharge was inadvertent, unintentional, and not intended to mislead consumers. In response to a request for additional information from the Department, SriLankan Airlines further noted its website’s minimal exposure to U.S. consumers and provided additional details about visitors to the U.S.-facing website.

Analysis and Conclusions

Section 41712 of Title 49 of the U.S. Code prohibits an air carrier, foreign air carrier, or ticket agent from engaging in an unfair or deceptive practice or an unfair method of competition. Pursuant to that authority, and to ensure that consumers are not deceived and are given accurate and complete fare information on which to base their airline travel purchase decisions, the Department issued its full-fare advertising rule in 14 C.F.R. § 399.84(a). Section 399.84(a) provides, in relevant part, that the first price quote for air transportation must state the entire price to be paid by the customer, including all taxes, fees, and carrier surcharges. The rule permits charges included within that total price to be stated separately, but the separate statement may not be false or misleading. The rule applies to websites of foreign carriers that are marketed toward U.S. consumers, as SriLankan concedes its website does.

On February 21, 2012, the Enforcement Office issued guidance on describing taxes and surcharges in fare advertisements. The guidance explains that it is an unfair and deceptive practice in violation of section 41712 to include carrier-imposed surcharges and other fees not imposed by a government under the label of “taxes,” or under the label “taxes and fees” as such a practice “is likely to confuse consumers and deceive them into believing the government taxes and fees associated with their airfare are higher than they actually are.”¹ Moreover, such a practice may mislead consumers into believing that a carrier’s fare is lower than fares available through other sales channels. Practices that do not comply with 14 C.F.R. § 399.84(a) also constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

¹ “Additional Guidance on Airfare/Air Tour Price Advertisements,” dated February 21, 2012, available at <http://www.dot.gov/individuals/air-consumer/additional-guidance-airfare-and-air-tour-price-advertisements>.

The Complainant presented evidence that on December 22, 2014, SriLankan displayed on its U.S.-facing website for travel from New York City to Colombo, Sri Lanka, a base fare of \$954.00 plus “taxes” of \$587.60. Upon further investigation, the carrier admitted that the majority of the “taxes” amount consisted of a carrier-imposed surcharge. We conclude that this display violated 14 C.F.R. § 399.84(a) and 49 U.S.C. § 41712.

SriLankan Airlines changed its method of displaying taxes and fees on its U.S.-facing website in January 2015. SriLankan Airlines stated that it had used its previous, noncompliant method of displaying fares for a lengthy period of time. SriLankan Airlines acknowledged that a relatively small number of tickets were sold to U.S. consumers through its website during this period.

Mitigation

In mitigation, SriLankan states that it is a small foreign air carrier that operates a regional network of services with a fleet of 21 aircraft. Those services do not include any operations to the United States. SriLankan’s only U.S. service derives from placing its designator code on flights operated by another foreign air carrier between a third country and the United States. Nonetheless, SriLankan states that it takes seriously its obligation to comply with applicable DOT regulations, including the advertising and website display requirements. SriLankan has never previously been the subject of DOT enforcement action.

Due to the very limited scope of its “codeshare-only” U.S. service, SriLankan does not have a separate U.S. web site, but U.S. consumers, like other consumers around the world, may access SriLankan’s global web site. SriLankan states that it relied upon a third-party vendor to load and format its fare displays and that any deficiency in the display of SriLankan’s fares was inadvertent and in no way reflected any intent on SriLankan’s part to mislead consumers or mischaracterize any element of the price to be paid. Each of the fare displays identified in the complaint included a clear disclosure of the total price to be paid by the consumer. Thus, at no time was there a risk that a consumer could be confused or misled as to the total price to be paid. The only issue raised by the complaint related to the way that the SriLankan web site displayed the components of that total price. Upon receiving the complaint, SriLankan took immediate action to revise that display. Specifically, the prior references to “surcharge” were changed to “carrier imposed fees/surcharges.” Fare displays on SriLankan’s web site, while continuing to disclose the total price to be paid by the passenger, now also include separate sub-totals listing the fare amount and all applicable taxes and carrier-imposed fees/surcharges.

Decision

We believe that enforcement action is warranted. The Enforcement Office and SriLankan Airlines have reached a settlement in this matter in order to avoid litigation. Without admitting or denying the violations found in this order, SriLankan consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 C.F.R. § 399.84. The carrier also agrees to the assessment of \$20,000 in compromise of civil penalties otherwise payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations. It comprises a strong deterrent against future similar misrepresentations, and will serve the public interest.

This order is issued under the authority contained in 49 C.F.R. Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that SriLankan Airlines Limited violated 14 C.F.R. § 399.84 by including carrier-imposed surcharges within an amount described as “taxes” on its U.S.-directed website;
3. We further find that SriLankan Airlines Limited engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712 by including carrier-imposed surcharges within an amount described as “taxes” on its U.S.-directed website;
4. We order SriLankan Airlines Limited, and its successors and assignees, to cease and desist from similar violations of 14 C.F.R. § 399.84 and 49 U.S.C. § 41712 as described in ordering paragraphs 2 and 3, above;
4. SriLankan Airlines Limited is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of that amount, \$10,000 shall be due and payable within 30 days after the service date of this order. The remaining amount, \$10,000, shall become due and payable if, within one year of the date of issuance of this order, SriLankan Airlines Limited violates the order’s cease and desist provisions or fails to comply with the order’s payment provision, in which case SriLankan Airlines Limited may be subject to additional enforcement action for violation of this order;
5. Payment shall be made to the account of the U.S. Treasury through the pay.gov website in accordance with the attached instructions. Failure to pay the penalty as ordered shall subject SriLankan Airlines Limited to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
6. We dismiss the complaint filed in Docket DOT-OST-2014-0230.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE WORKIE
Assistant General Counsel for
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