

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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| |) | |
| Sumaila Aongya |) | |
| |) | |
| v. |) | Docket DOT-OST-2020-____ |
| |) | |
| Air Transat |) | |
| |) | |
| ----- |) | |

COMPLAINT OF SUMAILA AONGYA

Comments with respect to this document should be addressed to:

Sumaila Aongya

[REDACTED]
[REDACTED]
[REDACTED]

E-mail: sum.aila@hotmail.com

Dated: August 6, 2020

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
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Sumaila Aongya)
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v.) Docket DOT-OST-2020-____
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Air Transat)
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COMPLAINT OF SUMAILA AONGYA

1. This complaint arises out of Air Transat’s non-compliance with the Department’s rules regarding consumers’ right to be refunded for flights to or from the United States (“U.S. Flights”) cancelled by airlines, even for reasons outside the carriers’ control, as described in the Department’s “Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel”¹ (“Enforcement Notice”).
2. This complaint also arises out of Air Transat’s application of its refund policies, which constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712². According to 14 CFR § 399.80(1)(l), it is the policy of the Department to

¹ Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (April 3, 2020) at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020. See also 14 CFR § 259.5(b)(5), and Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110-01, at 23129 (Apr. 25, 2011).

² Under 49 USC § 41712, the Department is authorized to investigate and decide whether a U.S. air carrier, foreign air carrier, or ticket agent engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department is also authorized to issue orders to stop an unfair or deceptive practice after notice and opportunity for a hearing.

regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph(s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

(I) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

FACTS

A. Flight cancelled by Air Transat

3. On November 25, 2019, I purchased a ticket for a roundtrip flight on Air Transat from Montreal (YUL) to New Orleans (MSY) departing on July 2, 2020 (Attachment 1). I booked the flight via BudgetAir.com.
4. On June 17, 2020, I learned that my flight was cancelled by Air Transat (Attachment 2).
5. On August 5, 2020, I contacted Air Transat to request a refund for the cancelled flight, but my request was denied. I was offered a Voucher/Credit (Attachment 3). I did not accept the voucher/credit.
6. There are no additional person(s) attached to this claim.

B. Air Transat’s refund policy for cancelled flights

7. Air Transat’s current policy is that customers who purchased nonrefundable flight tickets are not entitled to receive full refunds for flights cancelled or changed by the carrier due to reasons outside its control, including cancellations attributed to the COVID-19 pandemic. Air Transat only offers flight vouchers or credits in such situations and claims in its United States English website that “in accordance with government regulations”, that such bookings are ineligible for a refund .

C. Air Transat’s obligations

8. Air Transat is an airline that operates flights from and to the United States and is therefore subject to the Department’s jurisdiction for such flights and bound by the rules enunciated in the Enforcement Notice, which apply to U.S. and foreign airlines operating flights from, to and within the United States.
9. In its Enforcement Notice, and based on existing federal regulation, the Department reminds airlines about their obligation to offer prompt refunds for flights significantly delayed or cancelled by the carriers, even if the reason of such flight disruptions are outside the carrier’s control, and regardless of the non-refundability or cancellation penalty provisions of the ticket purchased by the affected consumers.
10. In page 2 of its Enforcement Notice, the Department lists the actions non-complying airlines must take to avoid enforcement action, as follows:
 - a. the carrier contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund;

- b. the carrier updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change;
- c. the carrier reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

11. On May 12, 2020, the Department issued a notice³ in the form of answers to frequently asked questions regarding airline ticket refunds. In the answer to question 4 of the notice, the Department reiterates that airlines may not retroactively apply changes to their refund policies and must honor the policies in place at the time of ticket purchase.

D. Air Transat's non-compliance and violations

12. Air Transat's policy of not issuing prompt refunds for U.S. Flights that are significantly delayed or cancelled by the carrier for reasons outside its control, and regardless of the non-refundability and cancellation penalty provisions of the purchased ticket, is in direct violation of its obligation to offer prompt refunds to affected consumers as per the rules detailed in the Department's Enforcement Notice.
13. The aforementioned no-refund policy is applied retroactively by Air Transat regardless of the policies and terms in place at the time consumers purchased flight tickets, which are governed mainly by Air Transat's tariff and stipulate that Air Transat will issue refunds for cancelled flights.

³ U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings, Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (See answer to question 4: "May airlines and ticket agents retroactively apply new refund policies?") https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

14. The aforementioned no-refund policy is applied by Air Transat regardless of the policies and terms in place at the time consumers purchased flight tickets, which stipulate that Air Transat will issue refunds for cancelled flights. Air Transat's policy constitutes an unfair or deceptive practice within the meaning of 49 U.S.C. § 41712.
15. According to 14 CFR § 399.80(1)(l), it is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph(s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business

Administration's size standards set forth in 13 CFR 121.201:

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

16. Many airlines are complying with their obligations to refund passengers, especially after the issuance of the Enforcement Notice on April 3rd. These airlines will be in an unfairly disadvantageous situation if other airlines, such as Air Transat are allowed to continue practices that violate the same obligations without incurring any penalty.

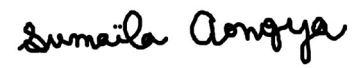
REQUESTED RESOLUTION

17. I am seeking the airline provide me with a Refund. In addition, I ask that the Department of Transportation to do the following:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of Air Transat for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;
- (2) Order Air Transat to comply with its obligation to offer prompt full refunds to original form of payment for U.S. flights that are significantly delayed or cancelled by the carrier, regardless of the reason of such flight disturbances and regardless of the nonrefundability or the cancellation penalty of the tickets purchased by affected customers.
- (3) Order Air Transat to:
 - a. contact, in a timely manner, the passengers provided vouchers for U.S. Flights significantly delayed or cancelled by the carrier to notify those passengers that they have the option of a refund;
 - b. update its refund policies, contract of carriage and tariff provisions to make clear that it provides prompt refunds to passengers if the carrier cancels a U.S. Flight or makes a significant schedule change, regardless of the reason of such flight disruptions and regardless of the non-refundability or the cancellation penalty provisions of the tickets purchased by the affected customers;
 - c. review with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.
- (4) Impose appropriate civil penalties on Air Transat.

Sumaila Aongya
Complaint – Air Transat

Respectfully submitted,


A handwritten signature in black ink that reads "Sumaila Aongya". The script is cursive and fluid, with the first name and last name clearly distinguishable.


Sumaila Aongya

Attachment 1

Copy of flight itinerary/eticket receipt

| | |
|---|---|
|  BudgetAir.com E-ticket | Booking number [REDACTED] |
|  MRS SUMAILA AONGYA | E-ticket number: [REDACTED] The e-ticket number is valid for all flights |

| ✈️ Outbound, Thursday July 02 2020 | | |
|--|--|--|
| Departure 06:45 Thursday July 02 2020 Montreal (YUL) Trudeau Intl. Apt. | Arrival 09:00 Thursday July 02 2020 New Orleans (MSY) | Online check-in number [REDACTED] Air Transat Flight time: 3 hour(s) 15 minute(s) Flight number: TS290 Class: Economy |
|  Luggage: Not included | | |

| ✈️ Inbound, Sunday July 05 2020 | | |
|--|--|--|
| Departure 20:30 Sunday July 05 2020 New Orleans (MSY) | Arrival 00:55 Monday July 06 2020 Montreal (YUL) Trudeau Intl. Apt. | Online check-in number [REDACTED] Air Transat Flight time: 3 hour(s) 25 minute(s) Flight number: TS293 Class: Economy |
|  Luggage: Not included | | |

Attachment 2

Confirmation/notice that the flights in your reservation have been cancelled by the airline.

8/5/2020

Gmail - Your booking is cancelled [REDACTED]



Sumaila Aongya [REDACTED]

Your booking is cancelled [REDACTED]

1 message

BudgetAir.ca <booking-ca@e.budgetair.com>
To: sum.aila@hotmail.com

Wed, Jun 17, 2020 at 12:49 AM



[Contact](#)

Your booking has been cancelled.

Dear Sumaila Aongya

Due to the current coronavirus situation, the airline has cancelled your flights. The process of restitution will start (where possible).

We will send a refund request to the airline. It can take weeks before the amount is deposited into our account. Once we have received the refunded amount, we will process the payback to you.

We will contact you via email once the process is finalised. Due to the increased number of cancellations, it can take weeks before you receive an update from us.

We kindly ask you not to contact us as we will be processing all cancellations without need for additional information from you.

Booking number [REDACTED]

E-mail: info@budgetair.ca

From Canada: +1 (647) 699 7955 (local costs apply)

Outside regular opening hours +31 (0)20 206 1983 (international charges apply)

Questions? [FAQs](#)

Travix Nederland B.V.

[Piet Heinkade 55 - 1019 GM Amsterdam, The Netherlands](#) (Please note: this is not a visiting

Sumaila Aongya
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8/5/2020

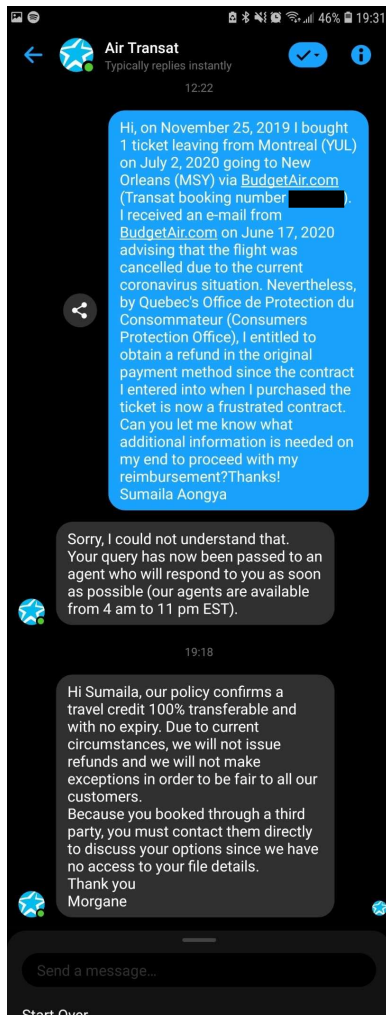
Gmail - Your booking is cancelled [REDACTED]

address)

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Attachment 3

Proof of communication that the Airline denied my request for a refund.



Certificate of Service

I hereby certify that I have, this 06 day of August 2020 a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Kimberly Graber, Esq.

kimberly.graber@dot.gov

Blane Workie, Esq.

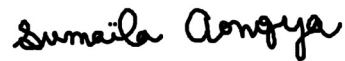
blane.workie@dot.gov

Robert Gorman, Esq.

robert.gorman@dot.gov

Don Hainbach, Esq.

dhainbach@ggh-airlaw.com

A handwritten signature in black ink that reads "Sumaila Aongya". The script is cursive and fluid.

Sumaila Aongya