

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Mike Borsetti
Third Party Complainant
v.
United Airlines, Inc.
Violations of 49 U.S.C. § 41712

Docket DOT-OST-2024-_____

COMPLAINT

Communications with respect to this document should be sent to:

Mike Borsetti
mike@borsetti.com

6 March 2024

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COMPLAINT

**UNFAIR AND DECEPTIVE PRACTICES IN OFFERING AIRLINE TICKETS
AND SOLICITING AWARD MILES PURCHASES**

1. This complaint arises from United Airlines, Inc.’s failure to sell a Ticket it offered to me or to reverse the “transfer” (purchase) of “award miles” it explicitly instructed me to do under the false promise that it would sell me such Ticket had I done so.

2. United’s offering of Tickets it will not sell, and its solicitation to purchase “award miles” under this false pretense, constitute separate and distinct unfair and deceptive trade practices that are harmful to consumers with no countervailing benefits to consumers or competition.

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FACTS

3. On 5 October 2023 at around 7 am PT I used <https://www.united.com/> to shop for round-trip flights from Chicago to Singapore. United quoted me an itinerary requiring 110,000 “award miles¹” (a form of pre-paid credit²) each way plus a cash amount, which I agreed to purchase (see Exhibit A).

4. United’s then website presented me with a message substantially identical to the one below instructing me to purchase at least 192,105 “award miles” to complete the purchase:

 **Not enough award miles**

You need ██████████ more miles to book this award flight. You can choose a different flight, or buy the additional miles [here](#) and come back once your purchase is confirmed to continue booking this one.

5. I had a sufficient amount of “Chase Ultimate Rewards® points” with JPMorgan which could be “transferred” into a purchase of the required United “award miles” as directed by United’s alert.

6. The purchase of “award miles” by credit card issuers is an important aspect of United’s business, which increasingly features the pre-selling of travel credits under the form of “award miles” to third parties. Indeed, by its own admission, in 2019 United

¹ United’s “award miles” are also called “MileagePlus miles.”

² United records the sale of “award miles” in its balance sheet as a “deferred revenue” liability; it is therefore self-evident that such “award miles” are a *de facto* form of credit. United Airlines Holdings Inc, Form 10-K filing with the United States Securities and Commission, February 29, 2024, page 58 and footnote (d) on pages 68 through 70, available at <https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/0000100517/000010051724000027/ual-20231231.htm>.


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earned ~\$5.3 billion from this business, accounting for ~12% of its revenue and ~26% of its profitability³.

7. I “transferred” enough “Chase Ultimate Rewards® points” to result in the purchase of 193,000 United “award miles” in my name by JPMorgan Chase (see Exhibit B)⁴.

8. Within a few minutes of 7:30 AM PT, I then completed the purchase on United’s website by pressing “Buy now.”

9. However, I received the following generic error message instead of the expected Ticket for the services offered (see Exhibit C):

 **We are unable to process your request**

Please try again later, or contact customer support at 1-800-396-1751.

10. As United was still offering the same flights at the same price, I attempted the purchase again using a different browser, with no success⁵.

11. I contacted United at the number given as instructed, and spoke with Mary (ID #2048776); the conversation was recorded per United Airlines standard operating procedure.

12. Mary told me in no uncertain terms that her system showed she could not sell me those flights (“they are not available” and “they are sold out for award miles”),

³ United Airlines Holdings Inc, Form 8-K filing with the United States Securities and Commission, June 12, 2020, Exhibit 99.1, page 6 available at https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/0000100517/000110465920073190/tm2022354d3_8k.htm.

⁴ This type of “award miles” purchase is available only in increments of 1,000 units.

⁵ “Vague error messages don’t help anyone and only frustrate users as they don’t know if it’s something they did or if it’s a bug in the software.” – Brian King, Code Project, <https://www.codeproject.com/Articles/5322503/Lets-Talk-about-Error-Messages>.

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contradicting the written online offer. As we spoke, I repeated the search on the website multiple times, and these flights were continued to be offered by United on the same terms.

13. I then reluctantly requested a reversal of the “transfer” of “award miles” I had made under the promise that United would issue me a Ticket against it (a refund), since Chase points have a higher valuable⁶.

14. After placing me on hold to speak to a supervisor, the same employee (Mary, ID# #2048776) conveyed that United refused to fulfill the ticket purchase as offered or to cause the “award miles” purchase to be reversed (refunded).

15. That afternoon, several hours after this conversation, United was still offering this itinerary on its website at the same terms.

A. LEGAL BASIS

16. 49 U.S.C. § 40101(a)(b) directs that the Department, in carrying out aviation economic programs in the public interest and consistent with public convenience and necessity, considers matters “preventing unfair, deceptive and predatory, or anticompetitive practices in air transportation.”

17. 49 U.S.C. § 41712 authorizes the Department to take action to address unfair or deceptive practices or unfair methods of competition by air carriers, foreign air carriers, or ticket agents. Under the Department’s final rule implementing section 41712, a practice is “unfair” to consumers if it causes or is likely to cause substantial injury, which

⁶ Chase Ultimate Rewards® points are more valuable than United MileagePlus miles because they have a vastly broader use, which includes turning them into cash for the purchase of any airline ticket or “transferring” them to any of 14 different airline or hotel loyalty programs.

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is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Proof of intent is not necessary to establish unfairness⁷.

18. A statement by a spokesperson indicates the Department's new willingness to take action in cases involving loyalty programs⁸.

B. DISCUSSION

19. 14 CFR 399.80(f) prohibits making "misrepresentations as to fares and charges for air transportation or services in connection therewith."

- a. United's act of offering to sell air transportation at a specified price, which it then fails to fulfill, constitutes such a misrepresentation.
- b. United's explicitly inducing the me to purchase "award miles" under the false pretenses created by this misrepresentation is both misleading and material.

20. An internet search revealed that the issue of United advertising services that cannot be processed for sale online or through customer support is not an isolated incident (see Exhibit D).

21. United may not have intended to program its systems to make misleading offers, but it is irrelevant here per 14 CFR 399.79(c), as "proof of intent is not necessary to establish unfairness or deception for purposes of 49 U.S.C. §41712(a)."

⁷ See *Final Rule, Defining Unfair or Deceptive Practices*, 85 FR 78707, Dec. 7, 2020, <https://www.federalregister.gov/documents/2020/12/07/2020-26416/defining-unfair-or-deceptive-practices>.

⁸ "We plan to carefully review complaints regarding loyalty programs and exercise our authority to investigate airlines for unfair and deceptive practices that hurt travelers as warranted," a department spokesperson said. "DOT officials are actively meeting with U.S. airlines and gathering more information on this issue." *Exclusive: US scrutinizing airline frequent flyer programs*, Reuters, 22 December 2023, <https://www.reuters.com/business/aerospace-defense/us-scrutinizing-airline-frequent-flyer-programs-2023-12-21/>

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22. United fails to mitigate its technological shortcomings by not having adopted the reasonable measure of manually selling air tickets at quoted prices when technology fails—a standard practice in commerce.⁹ United further exacerbated the misrepresentation by persisting for hours in making the identical offer to the public even after explicitly stating to me that it would not honor it.

23. United might argue, citing standard fine print, that it cannot guarantee seat availability or pricing for flights on airlines it has a contractual agreement to purchase transportation from. However, this defense is unconvincing in today's environment of cheap instantaneous connectivity, alongside United Airlines' size, means, and sophistication, and the fact that, in this scenario, both carriers collaborate and are obligated under the Star Alliance agreement. Moreover, United willfully continued to advertise this offer online several hours after informing me it could not be fulfilled, fully aware that it would not honor it.

24. By shifting the cost of its underinvestment in technology to consumers, United has a diminished economic incentive to address any issues this causes, adversely affecting the public interest¹⁰.

C. DEMANDS

I respectfully demand that the Department:

⁹ At any retail establishment, such as a supermarket, if the technology (e.g. electronic cash register) produces an error after scanning a product on offer or produces a price that does not match the one offered on the shelf, there is always an employee who can force the sale through at the price quoted and, separately, cause the technology to be fixed.

¹⁰ When there are no consequences for misrepresenting offers to consumers, there is no economic incentive for United to e.g. upgrade data links with its contractual partners to real-time or to refresh previously cached data.

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25. Opens enforcement proceedings under 49 U.S.C. §41712 and 14 CFR 399.79(e) through (f);

26. Finds United Airlines in violation of 49 U.S.C §41712 for making misleading offers that it will not fulfill;

27. Finds United Airlines in violation of 49 U.S.C §41712 for inducing consumers to purchase “award miles” under the false pretense of this misrepresentation;

28. Orders United Airlines to implement measures to counteract the impact of technological failures, specifically by mandating the manual sale of air tickets at previously quoted prices when its technology is unable to fulfill this function and to carry out necessary technological repairs;

29. Orders United Airlines to make me whole by either fulfilling the Ticket as quoted to me¹¹ or refund the 193,000 “award miles” back to “Chase Ultimate Rewards® points.”

Respectfully submitted,

/s/

Mike Borsetti

¹¹ Due to the passing of time, it would have to be for different dates.

CERTIFICATION

The contents of this Complaint and the attached exhibits are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I Mike Borsetti, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of this motion. I understand that an individual who is found to have violated the provisions of 18 U.S.C. § 1001 shall be fined or imprisoned not more than five years, or both.

/s/

Mike Borsetti

CERTIFICATE OF SERVICE

A copy of the foregoing has been served as required by 14 CFR 302.7 this day of 6 March 2024 upon the following parties via electronic mail, and no indication was received that any transmission had failed:

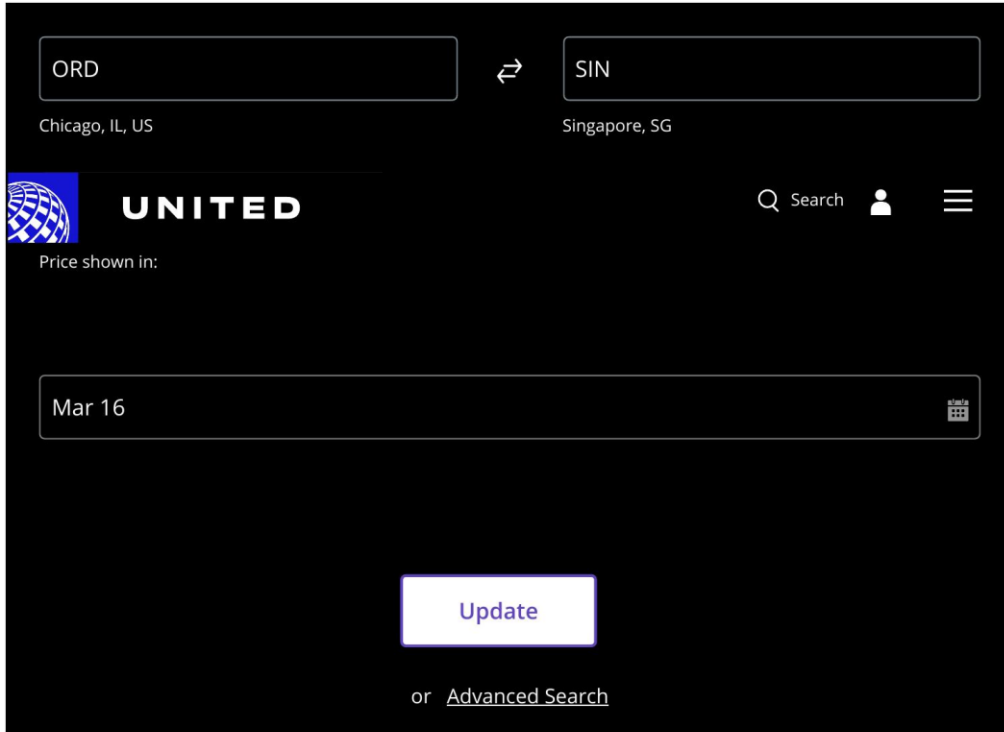
- For the U.S. Department of Transportation:
 - Blane A. Workie, Assistant General Counsel for the Office of Aviation
Consumer Protection: blane.workie@dot.gov
- For United Airlines Inc.:
 - Steve Morrissey, Vice President, Regulatory & Policy: steve.morrissey@united.com

/s/

Mike Borsetti

EXHIBIT A

Offers from <https://www.united.com/>; I selected the first one, business class.



Sort: Miles: **Business (lowest)** X Stops v Duration v Connections v Mixed cabin v Aircraft v

[Reset all](#)

DEPART ON: March 16

Fares are one-way, per person, and include taxes and fees. [Additional bag charges may apply.](#) Fare attributes apply to flights operated by United and United Express®.



[Compare fare types](#) [30-day calendar](#)

Economy ↑↓ Premium Economy ↑↓ **Business (lowest)** ↑

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<p>1 STOP Arrives Mar 17 12:30 AM 12:10 PM ORD --- 22H, 40M --- SIN TPE—2H, 15M Operated by EVA Airways Details Seats</p>	<p>60.5k miles + \$21.10 Saver Award Add to cart</p>	<p>Not available</p>	<p>110k miles + \$21.10 Business (I)</p>
<p>1 STOP Arrives Mar 17 12:30 AM 2:30 PM ORD ----- 25H ----- SIN TPE—4H, 30M Operated by EVA Airways Details Seats</p>	<p>60.5k miles + \$21.10 Saver Award Economy (X)</p>	<p>Not available</p>	<p>110k miles + \$21.10 Business (I)</p>
<p>2 STOPS Arrives Mar 17 12:30 AM 3:35 PM ORD ---- 26H, 5M ---- SIN TPE—1H, 35M KUL—2H, 40M Includes Travel Operated by EVA Airways, Singapore Airlines Details Seats</p>	<p>60.5k miles + \$21.10 Saver Award Economy (X)</p>	<p>Not available</p>	<p>110k miles + \$21.10 Mixed cabin</p>

EXHIBIT B

Chase purchase of "award miles".



Mike Borsetti <mike@borsetti.com>

Congrats! Point transfer complete!

1 message

Chase Sapphire Reserve® <chase@e.chase.com>

5 October 2023 at 07:27

Reply-To: "donotreply@e.chase.com" <donotreply-HP2v610000018b003ccb8093da5b434b5c3b28076@e.chase.com>

To: mike@borsetti.com

Good news, Mike. Your points/miles are ready for use.



Order Date: 10/05/23 Order Number: CAD5PI2IQAPA52Y



Time to use those points, Mike!

Your United MileagePlus Point Transfer is complete, and your points are ready for use!

Ultimate Rewards® Order Summary

Rewards Type: United MileagePlus Point Transfer

Total Points Transferred: 193,000 points

Membership ID: [REDACTED]



What to Expect

- One Chase Ultimate Rewards® point equals one partner mile/point when you transfer to participating frequent travel programs.

Visit [Ways to Earn](#) to learn how Chase Travel, dining, and everyday spending can keep those points coming.

EXHIBIT C

Refusal to fulfill the order as offered.



Checkout

⚠ We are unable to process your request
Please try again later, or contact customer support at 1-800-396-1751.

[← Go back](#) ✕

Revise this trip

ONEWAY (1 TRAVELER)

Chicago ORD to Singapore SIN
Mar 16 • 12:30 am to 12:10 pm • 1 stop
Duration: 22h 40m
Travelers: 1 and Extra Seats
Roberto Borsetti
Includes Travel Operated by EVA Airways

Chicago ORD to Taipei (TPE) TPE
Mar 16 • 12:30 am to 5:25 am
⚠ Please note this flight involves a date change
Duration: 15h 55m
Seats: 9A
Flight Number: BR 55
Aircraft type: Boeing 777-300ER
Operated by EVA Airways

----- 2H 15M -----

Taipei (TPE) TPE to Singapore SIN
Mar 17 • 7:40 am to 12:10 pm
Duration: 4h 30m
Seats: 2K
Flight Number: BR 225
Aircraft type: Boeing 777-300ER

EXHIBIT D

Not an isolated case.



r/unitedairlines • 2 yr. ago

Kendra-B-



Can't book flight through United website?

Question

Hi All - I am trying to book an international flight to Florence Italy on United's website and have been trying for about three days. For the first few days, I would get all the way to the end and would get an error saying "We are unable to process your request, please call... etc"

I have tried multiple browsers, multiple devices, and different times of days with no luck. Now trying today, it won't let me upgrade from basic economy to regular economy. It says "We're having trouble upselling your flight. Please try again later."

I've tried to call and use the online chat feature but the price they quote me is about \$500 more than the United website shows... Has anyone else run into this problem?

Update: I finally got ahold of someone really helpful at United, and they informed me that all the evening flights out of Denver that day haven't been officially confirmed as they are still forecasting demand for the flights. They said my best bet is just to continue trying to book the flight as it gets closer.

https://www.reddit.com/r/unitedairlines/comments/u95vcl/cant_book_flight_through_united_website/

Feb 28, 2022, 9:16 am		#8
justsawafo	thanks folks, it didn't go through even via phone.. agent say they cant book it.	

<https://www.flyertalk.com/forum/united-airlines-mileageplus/2070258-we-unable-process-your-request-any-idea-why-i-cannot-ticket-googleflights.html>