

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

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Tracey Cummings,)	
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v.)	Docket DOT-OST-2020-_____
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Sunwing)	
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COMPLAINT OF TRACEY CUMMINGS

Comments with respect to this document should be addressed to:

Tracey Charmaine Cummings

E-mail: turkee@eastlink.ca

Dated: August 6, 2020

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
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COMPLAINT OF TRACEY CUMMINGS

1. This complaint arises out of Sunwing’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 Sunwing’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 regard as an

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.

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 Sunwing

3. On January 20, 2020, I purchased a ticket for a roundtrip flight on Sunwing from Halifax NS (YHZ) to St Petersburg Fl (PIE) departing on March 18, 2020 (Attachment 1).
4. On March 16, 2020, I learned that my flight was cancelled by Sunwing (Attachment 2).
5. On March 16, 2020, I contacted Sunwing to request a refund for the cancelled flight, but my request was denied. I was offered a Full Refund and Voucher/Credit (Attachment 3). The voucher/credit was for the full amount. I did not accept the voucher/credit.
6. I had booked the flight on behalf of 4 person(s). The name(s) of the individual(s) are the following: [REDACTED]

[REDACTED]

B. Sunwing's refund policy for cancelled flights

7. Sunwing'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. Sunwing 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. Sunwing's obligations

8. Sunwing 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 nonrefundability 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. Sunwing's non-compliance and violations

12. Sunwing'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 nonrefundability 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. Prior to the COVID-19 pandemic, Sunwing's policies indicated that consumers can receive refunds for schedule changes and cancellations attributed to the COVID-19 pandemic. However, and since then, Sunwing changed its refund policies for cancellations and schedule changes in a way that negatively affects consumers by no

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.

longer permitting refunds. The new policy is applied by Sunwing based on the date of the cancellation or schedule change, and regardless of the policy in place at the time the passenger purchased the ticket.

14. The aforementioned no-refund policy is applied by Sunwing regardless of the policies and terms in place at the time consumers purchased flight tickets, which stipulate that Sunwing will issue refunds for cancelled flights. Sunwing'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 Sunwing 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 an 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 Sunwing for its non-compliance with the Department's Enforcement Notice and the regulations on which the notice is based;
- (2) Order Sunwing 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 Sunwing 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 nonrefundability 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 Sunwing.

Tracey Cummings
Complaint – Sunwing

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tracey Cummings". The signature is written in a cursive, flowing style with a large initial 'T' and a decorative flourish at the end.

Tracey Cummings

Attachment 1

Copy of flight itinerary/eticket receipt

Attachment 2

Confirmation/notice that a flight in your reservation has been cancelled by the airline.



Agency: SUNWING.CA

Kindly note, this ARCC message is no longer active as it references past travel dates.

Should you require a copy, please email our Preflight team at sunwingconfirmation@sunwing.ca.

Thank you.

Last Update: Monday, March 16, 2020 - 17:43 PM

Details

Please be advised that Sunwing flights scheduled to operate to HALIFAX-ST. PETERSBURG-HALIFAX between the dates of March 17 and April 09, 2020 have been cancelled. Customers are eligible to receive a full cash refund or a future travel credit. Customers who opt for a travel credit can receive an additional \$100 voucher per person to be used towards a future booking. Please visit our website, www.sunwing.ca/en/promotion/packages/travel-advisory and complete the form to receive your future travel credit or refund. If you have already submitted a request to change or cancel your booking, your options will remain as previously advised. Please rest assured that we have received your request and it will be processed. We apologize for the delay as we are experiencing a high volume of requests. Sunwing Vacations

Attachment 3

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

27 Fasken, Toronto, Ontario, Canada, M9W 1K6

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Titulaire d'un permis du Québec n°702928 | Titulaire d'un permis de la Colombie-
Britannique n°39606

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Tracey Cummings
Complaint – Sunwing

Additional Attachments

Confirmation of showing asking for a full refund None

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
Aaron A Goerlich (Sunwing)	agoerlich@ggh-airlaw.com

A handwritten signature in black ink that reads "Tracey Cummings". The signature is written in a cursive, flowing style.

Tracey Cummings