

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

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Chaim Zeev Rozen,	)	
third-party complainant	)	
	)	
v.	)	Docket DOT-OST-2025-0030
Virgin Atlantic	)	
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**REPLY**

Comments with respect to this document should be addressed to:

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**REPLY**

1. Complainant fully followed all of Virgin Atlantic Flying Club's rules. He transferred points from Chase to Virgin, with Chase by all indications paying Virgin a substantial sum as quid-pro-quo for the transfer. He found flights that met his party's requirements. He paid the required taxes and fees. Nothing about Plaintiff's conduct was "fraudulent" (Virgin Answer at page 1 line 8). Had a Virgin employee examined the booking for even a moment, the employee would have seen that the passengers shared the Complainant's last name – a classic redemption for family members, the very opposite of misconduct.
2. But the record gives no sign of any Virgin employee bothering to check. Instead, Virgin says it relied on "fraud detection tools" which "flagged the booking" – and on that basis, Virgin canceled the tickets. Virgin's Answer is silent on whether any human attempted to check whether the tools were correct. Nor did Virgin even tell Complainant it had canceled the booking, which would have prompted him to search for alternative

flights. Thanks to the combination of Complainant's diligence (trying to check in online) and other carriers' last-minute award availability, the passengers were able to travel as scheduled – albeit without special meals required for religious reasons and at an increase in points.

3. Neither at the time, in subsequent correspondence, nor even in its Answer does Virgin attempt to defend its decision to cancel the tickets. By all indications Virgin now admits that the decision was both gravely and obviously wrong. But until its Answer in this docket, Virgin in every message insisted it was not just right, but so obviously right that no further discussion could be entertained: “The decision made by our Loyalty Fraud Team is final” and “we will not be able to take further action on this matter” (Exhibit Bundle, p. 10), “we are unable to take any further action on this matter” (p.11), “we will not be reinstating your account” (p.6), “unable to reinstate the Flying Club account” (p.8), “unable to reinstate your Flying Club account” (p.5), and even “nor could we reply on any further correspondence on this case” (p.6). Complainant then sought assistance from the DOT's informal complaint mechanism, but even that was not enough to get Virgin to consider the possibility that it had been wrong from the start; instead, Virgin dug in yet further, replying “we are unable to reverse [the] decision” (p.16). These messages show the barriers Virgin erected to exhaust its victims and conceal its error. Only an unusually dedicated passenger, such as the Complainant, would have the wherewithal to persist. Yet even after Complainant mastered the Department's 14 CFR 302 Subpart D procedure, and even after Virgin's Answer, Virgin *still* has not revealed the evidence purportedly supporting its “determination” of misconduct by Complainant.

4. The question before the Department is whether Virgin's conduct is permissible under law, regulation, and contract. Virgin's Answer points to regulations it says it did not violate because it only canceled tickets and reservations, not the underlying flights. Fortunately for Complaint and passengers, other authorities – most obviously, Virgin's own contract, but also the Department's unfairness authority – nonetheless disallow what Virgin did. Meanwhile, Virgin's outrageous tactics – cancelling tickets silently and without notice, insisting its decision is “final” without even receiving a passenger's defenses (not to mention considering them), seizing points without allowing use for another booking – are both unfair and deceptive, and call for action under the Department's 41712 authority.

**Secret Cancellations and Unsubstantiated Allegations Are Not “Reasonable”**

5. [Virgin Flying Club Terms](#) 9.2 allow Virgin to deny travel if it “reasonably believes there has been fraud.” This provision specifically requires Virgin to “act reasonably in exercising its rights under this paragraph.”

6. Alas, Virgin did not act reasonably. FIRST, Virgin did not act reasonably when it canceled tickets redeemed for passengers with the same last name as the account-holder. SECOND, Virgin did not act reasonably when it canceled tickets without alerting the account-holder to any bases of supposed concern. THIRD, Virgin did not act reasonably when it rejected Complaint's repeated protestations<sup>1</sup> and provided no substantive response. FOURTH, Virgin did not act reasonably when it trained its staff to state that decisions were “final” even when it knew, from other passengers' meritorious complaints, that its systems frequently make errors. FIFTH, Virgin did not act reasonably

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<sup>1</sup> Complainant proclaimed his innocence fully ten times: October 29 10:58am and 11:53am, November 3 1:33am, 12:05pm, and 9:26pm, November 6, November 10 email, November 12 DOT complaint, January 27, February 1. See Complaint - Exhibit Bundle.

when it seized the value it had received from Chase and did not allow the account-holder to use that value towards any other booking.

7. Tellingly, even Virgin's Answer in this docket provides little insight into what led Virgin to suspect misconduct by Complainant. Virgin says Plaintiff's bookings had "a significant and substantial likelihood of being associated with fraudulent activity [based on] several tools ... which ... provided a series of specific data points." Despite Virgin's claim of highly reliable analysis, it then offers only one specific: "Complainant's email ... was flagged at the highest level." Complainant's email consists of three letters (his first initial, middle initial, and last initial) followed by three numbers giving a numerological representation of good luck, all at the widely-used Google email service Gmail. If Virgin's fraud detection systems treat three initials, a three digit number, and Gmail as indicating a "significant and substantial likelihood" of misconduct "flagged at the highest level," then Virgin's systems are not fit for purpose – and certainly are not reasonable.

8. The burden is on Virgin to establish that it acted reasonably, as its own contract specifically provides. But Virgin's Answer does not even try: "It is VAA's policy not to share..." Virgin could seek a protective order to protect its genuine secrets. Perhaps Virgin could convince the Department to allow it to file its methods with the Department *ex parte*, visible neither to the Complainant nor to the public, as the Department sometimes allows. "Trust us" might work in some circumstances, but in this docket, as to this Complainant, Virgin's misconduct has exhausted any credibility it might ordinarily rely on. So far, nothing in the record even begins to support Virgin's claim to have acted reasonably.

### **Virgin's Customer Service Plan Required Timely Notice of Cancellation**

9. Consistent with DOT requirements, Virgin publishes a customer service plan.<sup>2</sup> At heading “Notifying customers of known delays, cancellations, and diversion,” Virgin commits to notify passengers within 30 minutes of “when the change is made.” In light of Virgin’s narrow reading of 14 CFR 260, Virgin might protest that the second sentence of this section applies only to flight cancellations, as distinguished from Virgin cancelling tickets and reservations for flights that operate as scheduled. But the heading of the section refers to “known delays [and] cancellations” – broader language which by its terms includes anything that can be canceled, meaning including cancellations of tickets and reservations as well as entire flights. In any event, the well-established doctrine of *contra proferentem* entitles Complainant to the interpretation of this provision most advantageous to him.

10. Even more crisply on point, Virgin’s subsequent section “Notifying customers in a timely manner of changes *to travel itineraries*” (emphasis added) specifically covers “chang[ing] your *itinerary*” (emphasis added) and requires Virgin to “contact passengers in a timely manner to notify them of such changes.” Virgin indisputably did not do so. And this provision is no gift to passengers, nor fluff or dead letter; quite the contrary, it is specifically required by 14 CFR 259.5(b)(12).

### **Virgin's Conduct is Both Unfair and Deceptive**

11. 49 USC 41712 prohibits unfair practices. The Department follows the FTC in holding a practice to be unfair if it causes or is likely to cause substantial injury to consumers, cannot be reasonably avoided by consumers, and is not outweighed by countervailing benefits to consumers or to competition. Virgin’s conduct is grossly

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<sup>2</sup> <https://flywith.virginatlantic.com/gb/en/before-you-book/customer-service-plan.html>

unfair: Virgin's systems falsely accused Complainant on the thinnest of evidence. Virgin trained its staff to reject and ignore Complainant's earnest, heartfelt, and repeated protestations. Virgin trained its employees to prevent any mechanism for resolution short of this docket – even stonewalling Complainant in his informal complaint to the Department. (See Complaint Exhibit 5.) Consumers have no way to avoid these problems because consumers do not know what indicia of supposed misconduct Virgin uses, cannot comport their conduct to avoid false accusations, and have no mechanism to resolve problems when they arise. Virgin's conduct has no countervailing benefits to consumers; no doubt Virgin catches some genuine misconduct, but the benefits of catching genuine misconduct cannot be offset against the penalties improperly imposed on innocent passengers such as Complainant.

12. 41712 similarly prohibits deceptive practices. A practice is deceptive if it is likely to mislead a consumer, the consumer's interpretation is reasonable under the circumstances, and the representation or practice is material. Virgin's conduct was deceptive in that Virgin sent a "confirmation" email indicating the passengers could travel, stated "we look forward to welcoming you onboard," and never sent any further email (nor notified Complainant or passengers in any other way) when it unilaterally cancelled the tickets. Complainant and passengers reasonably expected that their ticket was valid when they booked it in accordance with all rules, received an email confirming the booking, and received no communication to the contrary. When passengers book a plane ticket, nothing is more material than whether or not they can travel as booked.

#### **Department Action Is Warranted**

13. To this day, Virgin has not admitted what should be amply apparent: It messed up. In its 18 page Answer, where does Virgin say "We're sorry," "We got it wrong", "We

admit that Complainant fully followed all rules,” or “Complaint did not do what we accused him of doing”? This alone calls for a Department finding – that Complainant did nothing wrong, and Virgin was incorrect to accuse him.

14. Quite the contrary, Virgin continues to argue that it has the absolute right to deny travel, seize points, and lock a frequent flyer account whenever its staff or systems suspect misconduct – no matter how slim the basis of their suspicion, no matter how error-prone or unreliable their analysis, no matter how many times the same system or reasoning has improperly penalized others who turned out to be innocent, no matter how much value the passenger transferred to fund the account. And while Virgin claimed to be “voluntarily implementing enhanced loyalty fraud detection and appeal procedures,” it offered nothing about the substance of those procedures, not to mention evidence that they actually fix the problem. Virgin could change its mind tomorrow, proceed no further with any such improvements, and leave the problem to continue to fester. Or Virgin could assign the “enhance[ments]” to the same staff who designed the flawed system that falsely accused Complainant and others. The Department should allow no such thing. Instead, the Department should *mandate* Virgin’s improvements, making such improvements a condition of closing this docket. And ultimately the Department should check Virgin’s work to make sure the improvements function properly.

15. Tellingly, public sources indicate many passengers have been falsely accused by Virgin. When news media first covered the Complaint in this docket, seven commenters promptly reported substantially the same experience.<sup>3</sup> A second round of coverage brought eight more such comments.<sup>4</sup> Complainant and counsel are personally aware of

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<sup>3</sup> See <https://onemileatatime.com/news/virgin-atlantic-loyalty-fraud/>

<sup>4</sup> See <https://www.dansdeals.com/more/news/airline-news/after-dansdeals-reader-formal-dot-complaint-virgin-atl>



two additional victims. Of course most victims had no reason to read that coverage or contact Complainant or counsel. There is every indication that this problem is widespread. Virgin's Answer says nothing of any effort to review prior customer correspondence to identify customers whose tickets and reservations were canceled, points seized, and accounts closed improperly – not to mention to reimburse those customers for the additional costs Virgin imposed through its false accusations. Only Department action can compel such a resolution.

16. Virgin may answer that compensation to individual passengers is outside the Department's role. But Virgin itself takes steps to prevent private litigation that might otherwise resolve this problem. In particular, the Virgin Flying Club Terms and Conditions include an arbitration clause with class waiver.<sup>5</sup> If that provision is enforceable as written, affected passengers cannot band together to hire a single set of lawyers to vindicate their rights. If the Department wishes to leave individual damage awards to the court, the Department should require Virgin to promise, in this docket, not to enforce its class waiver, its arbitration clause, or any claim limitation period in any future passenger litigation on this subject.

Respectfully submitted,  
/s/ Benjamin Edelman  
Benjamin Edelman

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[antic-tries-to-justify-fraudulent-actions-by-its-fraud-department/](#) from Mr. L ("I have the same situation..."), Isaac S ("I had the same experience..."), Random Guy ("I had the same story..."), Dany ("I had and actually still have exactly the same situation"), Darfan ("my last email sent to VA fraud team..."), Deranged Delta ("Had a similar incident..."), Ari ("I had the same issue..."), Reb ("I had the same story").  
<sup>5</sup> <https://help.virginatlantic.com/il/en/policies/terms-and-conditions/flying-club.html> at section 13

**Certificate of Service**

I hereby certify that I have, this 10th day of June 2025, caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Abigail Cox	abigail.cox@fly.virgin.com
Kimberly Graber, Esq.	kimberly.graber@dot.gov
Robert Gorman, Esq.	robert.gorman@dot.gov

/s/ Benjamin Edelman

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Benjamin Edelman