

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

<>

PLAINTIFF

AND:

**BRITISH AIRWAYS PLC**

DEFENDANT

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

**STATEMENT OF CLAIM**

1. The Plaintiff resides at <>, in the Province of British Columbia.
2. The Defendant, British Airways Plc, is a body corporate duly incorporated under the laws of the United Kingdom and registered extraprovincially in British Columbia on January 7, 2003 under number A0058411. The mailing and delivery address within British Columbia is 200 Burrard Street, 1200 Waterfront Centre, Vancouver, BC V7X 1T2.
3. The Defendant is a full-service global airline with an extensive global group network flying to and from centrally located airports around the world, including the Vancouver International Airport.
4. This is a proposed class proceeding on behalf of the Plaintiff and a putative class of people in British Columbia who, when purchasing an airline travel ticket, were improperly charged a "tax" by the Defendant which was not in fact a third-party tax but was a charge collected by the Defendant and retained for its own use.

The Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, RSBC 1996, c. 50.

5. On or about the 26<sup>th</sup> day of March 2008, the Plaintiff attended at the offices of Marlin Travel Oakridge Centre, a travel agency within the Province of British Columbia, acting, at all times material hereto, as agent for the Defendant in the sale of airplane travel tickets (the "Agent").
6. On or about March 26, 2008 as aforesaid, the Plaintiff purchased a ticket to travel from Vancouver International Airport to London, England, then on to Istanbul, Turkey and then returning to London, England and back to Vancouver, British Columbia from the Agent. The price quoted by the Agent for the ticket was \$969.93 plus taxes of \$450.07 for a total price of \$1,420.00 which the Plaintiff paid to the Agent and received the airplane ticket in return,
7. Together with the said invoice issued to the Plaintiff as aforesaid, the Agent also delivered to the Plaintiff a document entitled "ELECTRONIC TICKET ITINERARY/RECEIPT" dated March 25, 2008 which coded the tax portion of the cost of the airplane ticket as "XT". Within the "XT" or tax portion of the cost of the airplane ticket is an item coded as "YQ" and the cost of that item was \$326.00.
8. By including the \$326.00 "YQ" item within the "XT" or tax portion of the cost of the airplane ticket, the Defendant knowingly and willingly represented the "YQ" item as a tax charged to and collected from the Plaintiff by the Defendant on behalf of a third party government agency or body (the "Representation").
9. Contrary to the Representation, the \$326.00 "YQ" item was not a third party tax at all. Rather, the Defendant retained and diverted the monies paid by the Plaintiff for the "YQ" item to its own use.

10. At all times material to this action, the Plaintiff was a “consumer” within the meaning of that term as defined in s. 1 of the B.C. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, as amended (the “BPCPA”).
11. At all times material to this action, the Defendant was a “supplier” within the meaning of that term as defined in s. 1 of the BPCPA.
12. The transaction by which the Plaintiff purchased a plane ticket from the agent of the Defendant, as described in paragraph 6 herein, was a “consumer transaction” within the meaning of that term as defined in s. 1 of the BPCPA.
13. The Representation constitutes a “deceptive act or practice” within the meaning of s. 4 of the BPCPA in that it had the capability, tendency or effect of deceiving or misleading the Plaintiff by creating a false impression that the \$326.00 “YQ” item included within the “XT” or “total taxes” portion of the airplane ticket invoice was a tax collected by the Defendant for remittance to a third party government agency, when in fact it was simply additional monies charged, collected and retained by the Defendant on its own behalf and for its own use.
14. The Plaintiff seeks a declaration pursuant to s. 172(1)(a) of the BPCPA that the Defendant’s Representation contravenes the BPCPA.
15. The Plaintiff also seeks a permanent injunction pursuant to s. 172(1)(b) BPCPA restraining the Defendant from contravening the BPCPA by way of the Representation.
16. The Plaintiff seeks an order pursuant to s. 172(3)(a) of the BPCPA that the Defendant restore to her and all other putative class members any and all monies which the Defendant has acquired in contravention of the BPCPA, including an order that the Defendant refund all monies charged by the Defendant to the class members for “YQ”. In the alternative, the Plaintiff seeks

an order that that the Defendant disgorge to the class members all revenues collected in respect of “YQ”.

17. In the alternative, the Plaintiff is entitled to recover the unjust enrichment accruing to the Defendant who, by its actions as aforesaid, has been enriched by the collection and retention of the “YQ” revenues. The Plaintiff and putative class members have suffered a corresponding detriment, in that they have paid the “YQ” monies to the Defendant. The “YQ” revenues received by the Defendant from the Plaintiff and the class members resulted from the Defendant’s wrongful acts as described in paragraphs 7, 8 and 9 herein and accordingly there is no juridical reason for the Defendant’s enrichment.
18. The Defendant’s conduct, as outlined in this Statement of Claim, has been high-handed, reprehensible, and deserving of condemnation and punishment. The Plaintiff seeks, on behalf of herself and the members of the putative class, an award of punitive damages.

**WHEREFORE, THE PLAINTIFF CLAIMS ON HER OWN BEHALF AND ON BEHALF OF ALL PUTATIVE CLASS MEMBERS, THE FOLLOWING:**

- (a) a declaration pursuant to s. 172(1)(a) of the BPCPA that the Defendant’s Representation contravenes the provisions of the BPCPA;
- (b) a permanent injunction pursuant to s. 172(1)(b) of the BPCPA restraining the Defendant from contravening the BPCPA by way of the Representation;
- (c) an Order pursuant to s. 172(3)(a) of the BPCPA that the Defendant restore to him and all other putative class members any and all monies that the Defendant has acquired in contravention of the BPCPA including an Order that the Defendant refund all monies charged by the Defendant to the class members for “YQ”;
- (d) in the alternative, the Plaintiff seeks an Order that the Defendant disgorge to the class members all revenues collected in respect of “YQ”;

- (e) in the further alternative, the Plaintiff claims to be entitled to recover the unjust enrichment accruing to the Defendant by its actions;
- (f) punitive damages;
- (g) costs; and
- (h) such further and other relief as to this Honourable Court may seem just.

**PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.**

**DATED** at the City of North Vancouver, in the Province of British Columbia, this 31<sup>st</sup> day of March, 2010.

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James M. Poyner  
Solicitor for the Plaintiff

**THIS STATEMENT OF CLAIM** is filed by **JAMES M. POYNER**, of the law firm of **POYNER BAXTER LLP**, Barristers & Solicitors, whose place of business and address for delivery is: Lonsdale Quay Plaza, #408 – 145 Chadwick Court, North Vancouver, B.C. V7M 3K1 – Telephone: 604-988-6321 – Fax: 604-988-3632