

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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SAUL L. CANTOR AND MABEL G. CANTOR : Docket OST-99-5131  
v. CONTINENTAL AIRLINES, INC. :  
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SURREPLY OF  
CONTINENTAL AIRLINES, INC.

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May 10, 1999

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The reply submitted by the Cantors in this proceeding makes new claims and allegations to which Continental is constrained to respond so the Department will have a complete record before it. The new claims and allegations, like the original Complaint, are without merit, and the Cantors' Complaint should be dismissed. Continental states as follows in support of its position:

1. The Cantors' reply admits that airlines may impose conditions and limitations on frequent flyer programs and provide capacity controls limiting seats for reward travel, but complains nonetheless that, despite the clear notice to the Cantors that conditions applied (see Exhibits 1 and 2 to the Cantors' Complaint and Continental's Answer at 5 and Exhibit B), Continental has engaged in "widespread unfair and deceptive conduct in its OnePass® Program which affects the many

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thousands of Continental's OnePass Members." (Cantors' reply at 4) So far as Continental is aware, except for the Cantors, the relatively-few complaints about its "No Inflation Promise" ("NIP") program, which ended September 30, 1998, have all been concluded. Thus, there is no basis for requiring Continental to provide the extensive OnePass information sought by the Cantors (Cantors' Reply at 12-13) or pursuing their isolated complaint. Nor is there any putative class the Cantors would have standing to represent, since the NIP program has concluded by its own terms and other complaints have been brought to conclusion.

The fundamental premise of the NIP program was to allow OnePass members to receive OnePass travel in BusinessFirst® at redemption levels lower than those which would otherwise be required during a five-year period. Continental made clear that this extraordinary benefit was subject to the terms and conditions of its OnePass program, despite the Cantors' selective reading of Continental's confirmation notice.

2. The notice of terms and conditions is stated clearly in the "No Inflation Promise" Confirmation and on the reverse in type which is only slightly smaller than the type on the front of the letter (see Exhibit 1 to the Cantors' Complaint). Although the Cantors now complain they should receive special treatment because they "are in their eighties and . . . have difficulty reading such print," they have been assisted throughout by their children and admit they learned about the conditions imposed when they spoke with Continental personnel. The Cantors now also argue (Cantors' Reply at 6) that Continental should have reprinted the

OnePass Members Guides notices on the NIP offer (and presumably every other offer), but Continental and its OnePass members should not be burdened with such a requirement. Although the Cantors further allege that there is “absolutely nothing on the front side of the “No-Inflation Promise” Confirmation which suggests that Continental’s promises are subject to any limitations, terms or conditions of any kind” or “that even refers the reader to the reverse side of the document” (Cantors’ Reply at 6-7), their own exhibit shows that the “No-Inflation Promise” Confirmation clearly and conspicuously says, “please review the terms and conditions on the reverse” (see Exhibit 1 to the Cantors’ Complaint). Moreover, the terms and conditions on the reverse state unequivocally that “OnePass® restricted travel dates and all terms and conditions will apply to reward travel.” Thus, the Cantors’ Reply is factually incorrect, and the premise for their Complaint, as supplemented by their Reply, fails.

3. Although the Cantors’ Reply complains that “Continental’s ‘No-Inflation Promise’ Confirmation . . . allows Continental to lure consumers to fly with Continental” (Cantors’ Reply at 7), so far as Continental has been able to ascertain from the Cantors’ OnePass records and the Cantors’ Complaint (see paragraph I.3, which indicates the Cantors earned their OnePass miles using credit cards), the Cantors themselves have purchased no tickets on Continental, and the Cantors’

Reply fails to claim that they have.<sup>1</sup> Although Continental sent its April 1996 letter on confirmation procedures for BusinessFirst reward travel to all active OnePass members, the Cantors claim that they did not receive that letter. If indeed the Cantors did not receive the letter, they were not active members of the OnePass program because they had not flown on Continental or had other account activity during the relevant period.

4. Without noting that Continental explicitly denied the Cantors' previous claim that "seats for OnePass® ticket holders . . . were limited to two seats per day for travel to Italy from the entire United States" pursuant to an agreement with Alitalia, the Cantors reiterate that unsupported claim and ask the Department to identify who in Continental makes such agreements with Continental's partners. Similarly, Continental has stated that it was without information sufficient to address the Cantors' claims that BusinessFirst seats to Italy were available at normal fares or for premium award redemption levels at the times cited in the Cantors' Complaint. But, as the Department well knows, all airlines allocate seats by fare and reward category, and any change to that system would have far-reaching consequences for the entire air transportation system. Moreover, the Cantors' surreply repeatedly says, "Continental does not deny these claims" without

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<sup>1</sup> The Cantors' Complaint alleges they purchased "three New York to Milan roundtrip tickets and one ticket for their daughter Hope Cantor at a cost of \$6,000 plus tax" (Cantors' Complaint, paragraph III.11), Continental's Answer said it had no knowledge of such a purchase, and the Cantors' Reply makes no claim that the Cantors purchased such tickets from Continental.

recognizing that, under the Department's rules, the statement that a party is without sufficient information to admit or deny an allegation "shall operate as a denial." (Rule 207 (b)) Thus, the allegations which the Cantors repeat have, under the Department's rules, been denied by Continental.

5. The Cantors admit that Mabel Cantor and Robin Cantor Wilder have already traveled to Italy using NIP awards. Moreover, Mabel, Saul and Hope Cantor currently hold confirmed reservations for a Continental Newark-Milan flight on August 17, returning August 25. Each of these three parties is waitlisted for BusinessFirst in accordance with Continental's OnePass reward program rules, subject to potential confirmation within 30 days of departure. Robin Cantor Wilder is waitlisted in coach for a Continental Newark-Milan flight on August 24, the only date she would accept, and confirmed for a return on September 2. What the Cantors seek by complaining to the Department is nothing less than a greater priority for upgrades than that accorded to other similarly-situated NIP Reward or OnePass travelers in addition to priority over fare-paying BusinessFirst customers. The result sought by the Cantors would be unfair to these latter customers and discriminatory in favor of the Cantors.

For the foregoing reasons, Continental respectfully requests that the Cantors' complaint, as supplemented by its reply, be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on counsel for the Cantors and the Department's Assistant General Counsel for Aviation Enforcement Proceedings in accordance with the Department's Rules of Practice.

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R. Bruce Keiner, Jr.

May 10, 1999  
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