

THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World (3rd edition, 2004)
The Practical Nomad Guide to the Online Travel Marketplace (2001)
<http://www.practicalnomad.com>

26 April 2004

Hugh McCann, General Manager of Rail Operations
JFK Airtrain, JFK International Airport
Pan Am Road - Building 402
Jamaica (New York), NY 11430

Joseph J. Seymour, Executive Director
Port Authority of New York and New Jersey
225 Park Avenue South
New York, NY 10003

Office of the Inspector General
Port Authority of New York and New Jersey
Post Office Box 2018
Hoboken, NJ 07030

New York City Transit Department
MetroCard Customer Service
370 Jay Street
Brooklyn (New York), NY 11201-9876

Complaints Department
New York City Department of Consumer Affairs
42 Broadway, 9th floor
New York, NY 10004

Complaint Unit
New York State Consumer Protection Board
5 Empire State Plaza, Suite 2101
Albany, NY 12223-1556

Dear Mr. McCann, Mr. Seymour, et al:

On my most recent visit to New York, I looked forward to the opportunity to ride the new Airtrain from and to JFK. While I enjoyed the ride, I found the payment system, specifically the manner of labeling and advertising MetroCards used for payment of Airtrain fares, to be false, deceptive, and fraudulent.

So far as I can tell, the only acceptable form of payment for Airtrain fares is the "MetroCard". MetroCards are sold at vending machines in Airtrain stations, in MTA subway stations (and perhaps in other locations). There is no indication on any of those MetroCard vending machines as to whether they are operated by the MTA, the Airtrain, the Port Authority, or some third-party or multi-agency fare and payment clearinghouse. So it's impossible for consumers like me to know to which of you to direct complaints, or against whom to proceed, and on whom to serve process, should we need to seek redress through the courts.

Having determined that payment for the Airtrain is made by MetroCard, I included the cost of the per-ride fares for my planned Airtrain rides, along with the per-ride fares for my planned MTA subway rides, when I compared whether to buy a per-ride or "unlimited" MetroCard for my stay in New York. Since the total cost of per-ride fares for my subway and Airtrain rides would be greater than the price of a 7-day "Unlimited Rides" MetroCard, I purchased an "Unlimited Rides" MetroCard.

The only description available from the unattended MetroCard vending machine was that the ticket I purchased was valid for "Unlimited Rides". There was no indication that an "Unlimited Ride" ticket would be limited to certain rides, and not accepted for some rides for which a per-ride MetroCard is accepted (e.g. accepted for subway rides but not Airtrain rides), or that it would be limited to a certain number or frequency of rides (e.g. no more than one ride every 18 minutes).

I reasonably relied on the plain meaning of the words "Unlimited Rides", and on the requirements of New York city and state law that limitations be plainly disclosed (even in the absence of an affirmative claim that an offer is "unlimited"):

5-09. LIMITATIONS ON OFFER

Limitations, conditions, exclusions, modifications, etc. of advertised offers must be disclosed clearly and conspicuously in print advertising and announced in television and radio advertisements. (Consumer Protection Law, Rules of the City of New York, Title 6, Chapter 5)

It turned out that the "Unlimited Rides" MetroCard has undisclosed limitations, and is not valid for unlimited rides, contrary to the plain language of its name. As a result, I had to purchase additional per-ride MetroCards for both subway rides (when I entered a subway station, found that it was only possible to board in the opposite direction from my destination, exited the station -- reasonably believing that my "Unlimited Rides" MetroCard would be valid for any number and frequency of rides -- and my MetroCard was not honored for entry for 18 minutes, which I couldn't afford to wait, at the entry in the opposite direction) and Airtrain rides (when I was told that "Unlimited Ride" MetroCards are never accepted for any Airtrain rides).

By reasonably relying on your false representations, I was misled and harmed. I believe that both your labelling of the MetroCard I bought as an "Unlimited Rides" fare card, and your failure to disclose its actual limitations (limited to 1 ride every 18 minutes, limited to subway rides and not valid for Airtrain rides) constituted fraud. Since these are obviously standardized representations, incorporated in MetroCard and vending machine labels, user interface screens, advertisements, and literature, I believe that they constitute a systematically false, deceptive, and fraudulent business pattern and practice.

Because New Yorkers are likely to learn of these undisclosed limitations by experience, most of the damage to consumers will be suffered by visitors to New York unfamiliar with the transit systems, who have to rely on the labelling and descriptions of what fare payment options are available -- as I did. The differential burden of these fraudulent practices on visitors is, of course, especially pronounced in the case of the JFK Airtrain.

Please reply to confirm that:

(1) you have desisted from the false, misleading, and fraudulent use of the word "Unlimited" as a label or description for MetroCards that are not, in fact, accepted for unlimited rides at all places where per-ride MetroCards are accepted; and

(2) you have added clear and conspicuous disclosures of the limitations on these MetroCards to labelling, point-of-sale descriptions, user-interface messages, and advertising, as required by New York city and state consumer protection law.

Sincerely,

Edward Hasbrouck