

PROFECO Complaint Form

Foreign Consumer Information

Name: XXX
Address: XXX.
XXXX

Daytime Phone No. (xxx) xxx-xxxx
Evening Phone No. (xxx) xxx-xxxx
Fax Number (xxx) xxx-xxxx
Email Address: xxx@xxx.com

Mexican Supplier's / Merchant's Information

Name Mayan Escape
Address Marina Las Palmas I
Local 21B, Marina Vallarta
Puerto Vallarta, Jal. 48354
Phone Number 011-52-322-221-1833 ext 109

Explanation of Claim:

Dear PROCECO,

From September 21, 2003 to September 26, 2003 we visited your country on vacation. During our visit we attended the Mayan Palace Timeshare presentation in Puerto Vallarta. When we declined the purchase of the Timeshare we were given a presentation for the Mayan Escape Discover the Dream Package. The Salesman promised that if we purchased this package our family of six would be staying in the best 2 or 3 bedroom condos in the most distinguished resorts in the world for \$199 or \$399. We were told that all of the places to choose from were the high 5 star quality of the Mayan Palace. We were told that if we bought the package we would insure that our family could vacation 10 years from now at today's locked in rates. We were told that we could gift weeks to our children so they could go with their friends for Spring Break. We were told that if we purchased this vacation package it would insure that our large family of six would be staying in 2 and 3 bedroom condos, not studios or hotel rooms. It sounded so wonderful that we asked to see the package. We were told that they did not keep the packages there. It would be mailed to us in a few weeks. We asked if we could use a computer so that we could look at the vacation web site. We were told that there was no computer available. They assured us that everything was as they stated. They had us fill out an enrollment application. (See Material Attachment 9) They had us sign it. When we questioned them about the Terms & Conditions, we were told that it meant everything listed on the Verification Statement. They showed us the Verification Statement and asked us to initial and sign. We read the Verification Statement. When we read that the contents of the package were as set forth in the Verification Statement

we agreed to sign it. We gave our Credit card for the \$4000 fee. We were very happy about our purchase. We felt that now we could afford to come back to Mexico often and stay at the beautiful Mayan Palace or its equivalent.

A few weeks later, when we were back at home, our vacation package arrived. We were shocked when we opened it up and discovered the undisclosed Terms & Conditions that came inside of the package. We immediately got out our Verification Statement. It plainly stated that. "I understand the contents of the Discover the Dream package as set forth in the Verification Statement." (See Material Attachment 1 #8) Nowhere in the Verification Statement does it list any Terms and Conditions. We were also very stunned to see that that our vacation package did not included all of the weeks promised to us in our Verification Statement. We than went to the Discover the Dream website. We were very shocked to see such limited availability of places to stay. The places available were not the 5 star qualities as promised. Most places available were for studio/hotel rooms. Not the 2 and 3 bedroom condos as promised. We were shocked when we saw that the better places had a mandatory all inclusive clauses which require you to pay an additional fee ranging from \$155 per day per person up. (See Material Attachment 8) This was not disclosed in our Verification Statement. At this time we felt that too many important facts had not been disclosed to us. The vacation package that we had been so happy about in Mexico no longer held joy for us. We knew that the undisclosed Terms & Conditions now devalued the package and made it a financial risk for us. We then decided to call the Mayan Escape and request cancellation for nondisclosure and a refund of our \$4000. We followed up the phone call with an e-mail request for cancellation and a refund. The Mayan Escape responded with an e-mail acknowledgement and a request for elaboration. We returned an e-mail elaborating on our reasons for requesting cancellation and refund. We stated that as a consumer we had the right to receive sufficient and truthful information about the products acquired (articles 32, 33, & 34 of the Federal Consumer Protection Law of Mexico. Because the Mayan Escape misrepresented their product we wanted the contract canceled. We stated that we were preparing a formal complaint to PROFECO and would have it delivered on Friday, October 24, 2003 if we did not receive a refund. At this time we have not heard from the Mayan Escape.

We are submitting a claim against Mayan Escape for the amount of \$4000 US Dollars. This amount is for our basic contract value. We wish a full refund of this amount for the following reasons:

1. Under Article 56 of the Federal Consumer Protection Law of Mexico the contact will be perfected within five working days from the delivery of or signing of the contract, which ever occurs the latest. During this time the Consumer will have the right to revoke his consent without any responsibility. We provided the Mayan Escape with notice to cancel on October 17, 2003. This was three business days from receiving the non disclosed Terms & Conditions which Mayan Escape states are part of their legally binding contract. Since we did not receive this part of their undisclosed legally binding contract until October 14, 2003 we believe that complete

delivery of the contract did not take place until October 14th, and therefore we are within the legally mandated time for cancellation and refund.

We telephoned the Mayan Escape in Puerto Vallarta on October 17, 2003 with a request to cancel. On October 17, 2003 we also e-mailed the Mayan Escape with our request for cancellation and a refund. (See Material Attachment #2) On October 18, 2003 we received an e-mail from Brian Symington, Administrator for Mayan Escape, indicating that they had received our e-mail requesting cancellation and asking for elaboration. (See Material Attachment #3) On October 19, 2003 we e-mailed Brian Symington at the Mayan Escape with our reply to his request for elaboration on our reasons for cancellation and request for refund (see Material Attachment 4)

The Mayan Escape vacation package includes a large box of program materials, including vacation certificates, website username and password, and other materials which were mailed, via UPS, to us. Although Mayan Escape may claim that the contract was perfected at the time of signing, we are filing a PROFECO claim against Mayan Escape, demanding a full refund because the material that arrived in their vacation package was not what was promised at their sales presentation or listed in their original contract. Because the vacation package included the non disclosed Terms & Conditions which the Mayan Escape states in their Terms & Conditions are a legally binding contract, we are claiming that the contract was not fully delivered until the arrival of the vacation package which included the Terms & Conditions. Because we did not receive the Terms & Conditions until October 14, 2003 we are exercising our right under Article 56 of Mexico's Consumer Protection law to revoke our consent without any responsibility. Revocation according to this Article will terminate the contract.

10/14/03 received vacation package containing undisclosed Terms & Conditions. (Material Attachment 5 Copy of shipping label)

(Material Attachment 6 Copy of tracking number from UPS)

10/17/03 telephone call to Mayan Escape requesting cancellation and refund. (Will provide copy of phone bill upon request)

10/17/03 e-mail to Mayan Escape requesting cancellation and refund. (Material Attachment 2)

10/18/03 e-mail from Mayan Escape confirming receipt of requested cancellation and refund. (Material Attachment 3)

2. We have the right to the replacement of the product, to the advantage, compensation or return of the paid amount, to their election, in the following case. When the net content of a product or the given amount is smaller than indicated in the package or the packing. (Article 92 Fraction I of the Federal Consumer Protection Law)...

a.) Vacation package material did not include any of the Vacation Interlude weeks, or Last Minute weeks that we were promised in our written contract. (See Material

Attachment 1, Verification Statement #1 & #3). This devalues the package as we did not receive 40 of the weeks that we were promised in the Verification Statement.

3. Terms and Condition never previously disclosed verbally nor in writing on our contract. As a consumer, we have the right to receive sufficient and truthful information about the products acquired (Articles 32, 33 & 34 of the Federal Consumer Protection Law). The consumer will have a right to the replacement, to the advantage, compensation or return of the paid amount, to their election in the following case: If the item does not correspond to the quality, it marks, or substantial specifications and other elements under which it has been offered. (Articles 92 of the Federal Consumer Protection Law)

- a.) No where on the Mayan Escape Verification Statement are the Terms & Conditions disclosed. Receipt of the package is the first time that we were ever informed that there were these restrictions. Since this is the first time that Mayan Escape has fully disclosed the Terms & Conditions and states that they are a binding contract in their Terms & Conditions we should be entitled to review them and cancel the contract if we do not wish to abide by them.
- b.) The following is listed in the Terms & Conditions inside the package and never disclosed to us on the Verification Contract. (See Attachment 7)
- c.) Terms & Conditions can be updated (changed) at their discretion. (See Material Attachment 7, #2) This devalues the package for us, as this gives the Mayan Escape the right to change or create new terms & Conditions at their will. There is too much risk involved for us in never knowing what or how stringent the Terms & Conditions will be.
- d.) Terms & Conditions states that an additional fee will be applied if vacation is gifted to a friend or family. (See Material Attachment 7, #6.1) This was never disclosed on the Verification Statement. On the Verification Statement Mayan Escape specifically states that our weeks may be gifted to friends and relatives, but they do not disclose that there is an additional charge for this. It would be one thing if they had just not disclosed the fact that you can gift the weeks to others, but they clearly spelled this out in their contract as an enticement to customers and willfully defrauded us by not disclosing all the truth, that there were additional fees. This devalues the package for us, as it requires us to pay an additional, undisclosed fee. There is too much financial risk for us in not knowing about the fee, and not knowing how much the fee will be.
- e.) Terms & Conditions states that you have to be 21 years old to have a reservation. (See Material Attachment #7, #6, 1). This was never disclosed to us on the Verification Statement. This devalues our package because we bought this package with the intentions of gifting it to our children and college age nieces and nephew. They are not 21 so they would not be able to use it.

- f.) Terms & Conditions state that the Terms & Conditions and the Dream Program, including but not limited to fees, benefits, seasonal designations and other procedures could be changed from time to time. (See Material Attachment 7, #7,4) This was never disclosed on the Verification Statement This devalues the package and makes it financially too risky for us because at any given time the Mayan Escape could double or triple the fees. There is no limit as to how high the fees could possibly go. They could also change the entire concept of the Dream package, making it into something completely different than what we had purchased. This devalues our package because there is too much risk in the unknown.
- g.) The choice of resorts is extremely limited, and at good locations, the only options available are all inclusive packages which require us to pay an additional exorbitant fee per day for food and drinks. This was never disclosed in the Verification Statement. This devalues the package for us as financially we would never be able to afford this additional excessive fee for our four children and ourselves. (See Material Attachment 8)

The non disclosure of the above Terms & Conditions are too restrictive and financially too risky for our enjoyment, and they devalue the package for us. The non disclosed requirement of the added fee for the all inclusive package at the good locations makes it financially impossible for our family to be able to vacation at the resorts of our choice. We would have never agreed to the purchase of the Discover the Dream package if all of the above had been disclosed to us on the Verification statement.

In conclusion, we feel that a full refund is justified since:

1. We cancelled the contract in accordance with Article 56 of the Federal Consumer Protection Law. The contract will be perfected within five working days from the delivery of or the signing of the contract. During this period the consumer will have the right to revoke his consent without any responsibility. We provided the Mayan Escape with notice to cancel within three days of receiving the non disclosed Terms & Conditions which Mayan Escape states is part of their legally binding contract. Since these Terms were not on the Verification Statement but were inside the package sent weeks later by mail, the contract should not be considered delivered until we received the complete Vacation Package. Since we cancelled within 5 days of receipt of the remaining portions of the contract contained in the Vacation package, the contract should not be considered perfected, but properly canceled in accordance with Mexican law.
2. Our package did not contain all the vacation weeks that we were promised in the Verification Statement.
3. The Mayan Escape never disclosed the Terms & Conditions which they state are a binding contract in their Verification Statement and therefore misrepresented their product. This was a clear and willful act of non disclosure. The Mayan Escape was being dishonest and deceptive.

4. The Mayan Escape never disclosed on their Verification Statement that you would be required to purchase the all-inclusive package in order to stay at the better resorts. They enticed us with the ability to stay at resorts of their caliber, but never stated that there would be an additional mandatory fee charged in order to do so. This was dishonest and deceptive.
5. The Mayan Escape states that our weeks may be gifted to friends but never says anything about the additional fees that will be charged. This is a clear and willful act on the part of Mayan Escape to entice us with this ability to gift weeks to others, but then defraud us by not full disclosing the truth in the Verification Statement.

Thank you very much for considering our claim and please contact us by phone at xxx-xxx-xxxx or by email at xxx@xxx.com should you have any questions or need additional information.

In closing we would like to convey to you how much we have loved visiting your country in the past. Mexico has been our family's favorite place to vacation. Your country is so beautiful and most of your people so nice. This experience with Mayan Escape on our last trip to Puerto Vallarta has disillusioned us very much. We're not sure that we ever want to return to Mexico. It is hard to enjoy yourself when you are afraid to believe the people that you are talking to or doing business with. The day we went to the Mayan Escape presentation was our 30th wedding anniversary. What should always be a great memory for us will forever be clouded by this terrible experience. All we can hope now is that you will be able to help us recover our money.

Regards,

Mr. X
October 24, 2003

Mrs. X

Enclosures

1. Copies of shipping label and tracking number
2. Copy of contracts
3. Copy of Terms & Conditions
4. Copies of all correspondences with Mayan Escape.
5. Proof of identification in the form of Driver's license