

PROFECO Complaint Form

Foreign Consumer Information

Name: XXXXXX
Address: XXXXX,
Tustin, Ca 92782 USA.

Daytime Phone No. (XXX) XXX-XXXX
Evening Phone No. (XXX) XXX-XXXX
Fax Number (XXX) XXX-XXXX
Email Address: XXX@cox.net

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 PROFECO,

From October 11, 2002 to October 18, 2002 my wife and I visited your country on vacation, staying at the Mayan Palace in Nuevo Vallarta. During our visit we were solicited to attend a presentation given by Mayan Escape. The presentation was for a Timeshare purchase which my wife and I decided to decline. We were then given another presentation for the Mayan Escape Discover the Dream Package. The Salesperson described an extremely attractive vacation package as laid out in the Verification Statement (*see Attachment page 2*). When we asked to see the "Discover the Dream" membership materials, we were told that they would be mailed to us few weeks after our full payment had been processed. The Salesperson stated that all the Terms and Conditions were listed on the Verification Statement. We were also told that if we had questions before we received the package, we could contact the company by calling the Customer Service phone number or by sending an email to the address included on the Verification Statement. After reading the Terms and Conditions we decided to proceed and we initialed and signed the Verification Statement. We paid \$500.00 and signed a Payment Authorization (*see Attachment page 3*) agreeing to 5 monthly installments in the amount of \$219.80 be charged to my credit card.

During the next 3 months, three charges appeared on my credit card statement as scheduled but then stopped without any explanation. On May 21, 2003 I sent an email (*see Attachment page 5, email 1*) to the email address included on the Verification

Statement, inquiring as to the status of my membership. On May 28, 2003 I followed this up with a letter (*see Attachment page 7*) to the address specified on the Verification Statement. Two months elapsed and I did not received a response to either my letter or email, so on July 21, 2003 I wrote to my credit card company (*see Attachment page 8*) to dispute the charges which had already been made to my account. On July 26, 2003 I received an email from Michele Krystiniak of Mayan Escape (*see Attachment page 5, email 2*) in response to my letter, who confirmed that we had two outstanding payments. I authorized a single payment of \$439.60 (*see Attachment page 6, email 1*) to cover the two remaining payments and on July 30, 2003 I received another email from Michele Krystiniak (*see Attachment page 6, email 2*) confirming that our membership was now paid in full and that we could expect the membership materials around the end of August.

Upon receipt of the membership package I activated the membership via the <http://www.DiscoverTheDream.com> web site, according to the instructions in the membership package. On September 3, 2003 I received an email (*see Attachment page 6, email 3*), which provided my Customer ID & password and confirmed that the membership was now active.

At this point I started to closely review the membership package and noticed a number of discrepancies between the Verification Statement and the membership materials that we received. I called the Customer Service phone number to bring these discrepancies to their attention. After giving my name and membership number, I was told that I was not in their computer and that there was no record of our membership. To date, I have made numerous phone calls and have faxed our Enrollment Application (*see Attachment page 4*) as requested but I have had no response from Mayan Escape.

We are submitting a claim against Mayan Escape for the amount of \$1,599. We wish a full refund of these amounts for the following reasons:

- 1. The vacation package we received did not contain the same quality, brand or specifications offered us at our sales presentation and / or listed in our written contract. As the consumer, we have the right to replacement, to discount, receive compensation or return, at our election, if the products do not meet the conditions of quality, brand or specifications offered. (Article 92 Fraction II of the Federal Consumer Protection Law).**
 - a. A number of the benefits mentioned on the Verification Statement are part of the “ICE Gallery” membership. Our package included membership to OVC (OurVacationCenter). The vacation package we received has no mention of the “ICE Gallery” membership and does not contain the same brand or quality offered to us at our sales presentation.

- b. The Verifications Statement states that we would receive a 3 year “ICE Gallery” membership which allows booking subsequent *cruises* at savings up to 65%, five “ICE Interlude” weeks for \$299.00 - \$399.00 per week and **unlimited** “ICE Instant” weeks in any size unit for \$199-\$349 per week. We received 6 resort vacation certificates for vacations *from* \$349.00. A certificate for a 2 for 1 cruise, and one additional cruise certificate for a 7-day cruise *from* \$349 per person. There is no mention of the “ICE Interlude” weeks or **unlimited** “ICE Instant” weeks.
 - c. The Verifications Statement specifies that subsequent cruises and “ICE Instant” weeks are available for the duration of the 3 year “ICE Gallery” membership. The certificates received in the vacation package contain early expiration dates (*see Attachment pages 11 & 13*).
2. **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. Nowhere 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 Terms & Conditions state that we give up our right to federal protection against our telephone conversations being recorded without our knowledge (*see Attachment page 9*). They also state that we agree to unregulated phone solicitations, which is another federal right we are expected to give up. Had we been informed that we would be expected to give up basic consumer rights as part of the contract, we would never have signed it.
 - c. Terms & Conditions can be updated (changed) at their discretion (*see Attachment page 9*). 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 you have to be 21 years old to have a reservation (see *Attachment page 10*). 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 who are not 21 and would be unable to use it.
- e. 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 and devalues the package for us as financially we would never be able to afford this additional excessive fee.

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

1. The vacation package does not include all Interlude weeks, instant weeks, or cruise vacations as promised. The vacation certificates that are included are for inferior quality accommodations and contain early expiration dates.
2. Mayan Escape never disclosed the Terms & Conditions which they stated are a part of the binding contract in their Verifications Statement and therefore misrepresented their product. This was a clear and willful act of non-disclosure. This non-disclosure deprives us of our basic consumer rights under U.S. law.
3. Mayan Escape are denying that our membership is active and have taken no actions to rectify these issues, despite having sent me an email confirming that my membership is active.

Since we married, this was our first visit to Mexico. When purchasing the “Discover the Dream” vacation package, we had hoped to be vacationing in Mexico for many years to come. Hopefully, the outcome of this Mayan Escape experience will not deter us from visiting Mexico again in the future. Thank you very much for considering our claim and please contact us by phone at (XXX) XXX-XXXX or by email at XXX@cox.net should you have any questions or need additional information.

Regards,

Mr. X

Mrs. X

November 23, 2003

ATTACHED MATERIAL

Copies of Mayan Escape contracts

Page 1 - Welcome letter

Page 2 - Verifications Statement

Page 3 - Payment Authorization

Page 4 - Enrollment Application
Copies of all email correspondences with Mayan Escape
Page 5 - Email 1
Page 5 - Email 2
Page 6 - Email 1
Page 6 - Email 2
Page 6 - Email 3
Copy of letter to Mayan Escape
Page 7 – Letter 1
Copy of letter to Credit Card Company
Page 8 – Letter 1
Additional Terms & Conditions
Page 9 – OVC Terms & Conditions
Page10 – Vacation Terms & Conditions
Page11 – Cruise Terms & Conditions
Certificates
Page12 - Vacation Certificate
Page13 - Cruise Certificate
Proof of identification
Page14 – Copy of Permanent Resident Card