

PROFECO Complaint Form

Foreign Consumer Information

Name: John
Address: XX Ave
CA
Daytime Phone No. xxx-xxx-xxxx
Evening Phone No.
Fax Number
Email Address:

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,

We are submitting a claim against Mayan Escape for the amount of \$5,540. This amount includes \$5,500 for our basic contract value and \$40 for costs sustained for mailing. We wish a full refund of these amounts for the following reasons:

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- 1. We provided Mayan Escape with notice that we wished to cancel this contract within five business days from the signing of the contract and well in advance of receiving the vacation package material. (Article 56 of the Federal Consumer Protection Law).**

My wife and I purchased Mayan Escape's Platinum Vacation Package, signing the contract on June 29th (see **Appendix A** for copies of contract and credit card slip). After leaving the sales location, my wife and I were talking about the purchase and starting seeing a lot of inconsistencies in what the salesman had promised. Four hours after signing, I returned to the sales location and personally told the salesman, Roberto, that we wanted to cancel. During the sales pitch we were told we had a "cooling off" period by law, and could cancel with a full refund. Even though the contract said no refunds, we were told that did not cover the mandatory period provided by law.

When I returned to cancel, the salesman Roberto agreed that I could cancel, but said I would have to return another day since all the managers had left. Roberto made arrangements to meet me three days later, on July 2nd, at 10am, at the sales location at the Mayan Palace resort. He said he would have his manager there to process my cancellation. Roberto later contacted me at my hotel and tried to entice me out of canceling with additional free gifts. I told him I was firm with canceling and would see him on July 2nd.

To prove I tried to cancel this contract, I took my video camera when I returned on July 2nd and videotaped my attempt to cancel. As you will see in the video, I returned to the Mayan Palace location on July 2nd to handle my cancellation, fully expecting to have the matter resolved. (the time stamp on the video is set to Los Angeles time, local Mexican time is two hours later.) Neither Roberto nor his manager appeared at the sales location as promised, and the other Mayan Escape employees kept me sitting around for over an hour at the Mayan Palace location hoping I would eventually give up and leave.

When I did not leave, another Mayan Escape employee finally sent me over to their business office at Marina Las Palmas, where the manager was, who would help me. The employee sent me to the Las Palmas location after talking to the manager, Trevor Barr who they claimed was at that location. Even though I immediately got a cab, went to the Las Palmas office, and the salesman had told Trevor I was coming, Trevor was not there when I arrived.

The Mayan Escape business office was occupied by two individuals when I arrived, a man who said I could not cancel and then quickly left the office, and the receptionist. The receptionist, not knowing what to do, called Trevor, who was supposedly now at the Mayan Palace location, and gave me the phone to talk to him. Even after telling Trevor I was at their office and wanted to cancel, he refused, telling me I could not cancel.

To show that I made a good faith attempt to cancel this contract, I am enclosing a VHS videotape containing the video I shot when I went back to Mayan Escape to cancel this contract. The video covers my return to the sales location where I signed the original contract at the Mayan Palace, and then my visit to Mayan Escape's business office where I was subsequently sent to have my cancellation handled. I am also enclosing a CD-ROM containing a digital copy of the video, in case you do not have access to a VCR at your office. Specific sections of the video have been stored as separate files for improved clarity. **APPENDIX B** contains a listing of the files saved on the CDROM and the key points which are highlighted in each of these video files. If you look at only one file, the video clip in **MEOfficeAndDemandToCancel.AVI** clearly shows me in Mayan Escape's office, and the audio unmistakably picks up me stating that "I want to cancel the contract". This is also shown 7 ½ minutes into the VHS videotape at videotape time 9:38 – 9:40.

Please review the video at this time if you have not already done so to verify these facts.

From the video, hopefully you were able to observe the following points:

- a) On July 2nd I returned to the Mayan Palace to cancel this sales contract. (see files TaxiToMP.AVI and ArrivalAtMP.AVI)
- b) I patiently waited at their sales location for close to an hour to submit my cancellation and was completely ignored. (see files ArrivalAtSalesLocation.AVI and WaitingAtSalesLocationMP.AVI)
- c) I left the Mayan Palace location to go to Mayan Escape's business office where I was promised I could cancel the contract. (see file LeavingSalesLocationMP.AVI)
- d) The receptionist at the Mayan Escape business office was the one who made the call to the manager, Trevor Barr and gave me the phone. (see file MEOfficeAndDemandToCancel.AVI)
- e) As the camera pans around the business office, the main door can be easily viewed along with the receptionist, showing the Mayan Escape logo (reversed), clearly proving this was the Mayan Escape's office. (see file MEOfficeAndEndOfPhoneCall.AVI)
- f) I clearly stated, while standing in the business office of Mayan Escape, while on the phone to Mayan Escape's manager, Mr. Trevor Barr, that I wanted to cancel this contract. (see file MEOfficeAndDemandToCancel.AVI)

If you missed any of these points, please go back and review the video again. I believe the video clearly proves that I made a reasonable effort to cancel the contract. Mayan Escape ran me all over the town, costing me over \$25 in cab fare, and wasting close to three hours of my time. There should be no doubt that I made a good faith effort to cancel this contract on July 2nd as allowed by Mexican Law, and Mayan Escape simply refused to accept the cancellation. My wife did not want to meet with the Mayan Escape people again, but she wrote a Letter of Authority, giving me the right to cancel on her behalf. **APPENDIX C** contains a copy of the letter my wife wrote for me to take to Mayan Escape on July 2nd, giving her consent to cancel. Please note the July 1st date on the letter, as well as the fact that it was written on our Mexican hotel's stationary.

After returning to our hotel, I immediately contacted our credit card company by international long distance phone call and filed a claim disputing the charges on my credit card since Mayan Escape refuse to accept my cancellation attempt. I was under the impression that I only had 3 days to cancel, (which is the U.S. law) and attempted to verify with an independent party that I tried to cancel the contract that day. **APPENDIX C** also contains a copy of an email I sent the following day at the suggestion of a fellow American tourist to document that I tried to cancel my contract the previous day. The email was just as successful as my attempt to cancel in person. I never got any response. I copied myself on the email to keep a copy and show proof I sent it.

Not only did we attempt to cancel the contract within 5 business days of signing, but we again attempted to cancel the contract many days prior to receipt of the product.

The Mayan Escape vacation package includes a large box of program materials, including vacation certificates, website username and password, and other materials which are mailed, usually via UPS, to the American customer. Although Mayan Escape

claims that product delivery occurs at the time the contract is signed, many American tourists are filing PROFECO claims against Mayan Escape, demanding refunds because the material that arrived in their vacation package was not what was promised at their sales presentation or listed in their original contract. Until Mayan Escape actually provides the customer with the actual vacation certificates and the written rules and restrictions contained within the vacation package, there is no way a customer can know whether they are receiving what they were promised or not. Because Mexican law also gives the consumer the right to replacement, discount, receive compensation or return, if the products do not meet the conditions of quality, brand or specifications offered, (Article 92 Fraction II of the Federal Consumer Protection Law); this right can only be available if delivery of the goods is defined as when the actual vacation package is delivered to the consumer. Because there is a very real possibility that the package material may not be of the same quality, brand or specifications offered at the sales presentation and listed in the written contract, the law must uphold that delivery of the goods occurs when the vacation package material is provided to the customer. [Since I have yet to receive the package material, or Since I am canceling within 5 business days of receiving the package material,] I am completely within my legal rights, and the time limits specified under Mexican law to request this contract be canceled and a full refund provided.

APPENDIX D contains 1) a copy of the mailing label from this vacation package box, 2) a printout from the UPS website showing the box was mailed on July 24th and delivered to us on July 28th, and 3) a copy of Mayan Escape's faxed response to my credit card company's request on my behalf to cancel this contract, dated July 18th.

- The shipping label and UPS tracking information clearly proves the vacation package material was shipped on July 24th, and delivered to us on July 28th.
- Mayan Escape's faxed response shows that they sent their response to my credit card company on July 18th. The content of the fax clearly shows that on the date of the fax (July 18th) Mayan Escape knew of our desire to cancel.
- Mayan Escape's fax response lies about this being the first time they have heard we wanted to cancel (they did not know I videotaped my return to their office to request a cancellation),

Mayan Escape's own fax proves that they knew on July 18th we wanted to cancel this contract, which was at least 6 days prior to them shipping us the product.

Every time Mayan Escape has been informed that we wanted to cancel, they have

1. Refused to meet with us in person even when we went to their sales location and their business office as request by their personnel,
2. Refused to respond to our email confirming our previous day's attempt to cancel in person,
3. Refused to process our cancellation even when an independent, third party, our credit card company, informed them we wanted to cancel.

Our first two attempts to cancel were clearly within 5 business days of signing the contract, and our third attempt through our credit card company was clearly prior to

Mayan Escape even shipping the product to us. In all these attempts, we believe that Mayan Escape willfully ignored our rights under Mexican law.

Appendix E contains copies of emails sent to and received from PROFECO. After we contacted other Americans whose attempts at cancellation were also refused, we were told about PROFECO and initially asked for assistance on July 27. On August 19 we received a reply on how to proceed with our claim. Since that time, we have worked to document our claim, transfer our videotape to CDROM so anyone with a PC can view it, and helped to organize with other Americans who have also been denied their rights under Mexican Law.

- 2. The vacation package we received did not contain the same quality, brand or specifications offered us at our sales presentation and listed in our written contract, and we did not receive sufficient and truthful information about the products acquired. (Article 92 Fraction II of the Federal Consumer Protection Law) and (Articles 32, 33 & 34 of the Federal Consumer Protection Law).**

During the sales presentation, we told the salesman we were not comfortable purchasing from a Mexican company, since we felt that we might not have the consumer protections normally available to us at home. The salesman assured us that Mayan Escape was a U.S. company, showing us the imprint on the sales slip to verify his statement. **APPENDIX A** contains a copy of the credit card slip which clearly lists Mayan Escape with a San Diego, California address. Mayan Escape IS NOT a U.S. company and they clearly defrauded us on this purchase. Both U.S. and Mexican law provides for the right to rescind a contact when the merchant has clearly misrepresented the product, and in the case, Mayan Escape is part of the product we were purchasing, and they clearly misrepresented themselves. Mayan Escape's claim to be a U.S. company is a clear misrepresentation listed on the charge slip. From my research, Mayan Escape is not, and never has been a U.S. company and their misrepresentation of having a U.S. address on the charge slip is clearly fraudulent.

- 3. We should be entitled to reimbursement of our mailing expenses since these cost resulted from Mayan Escape failing to follow Mexican law.**

We made a reasonable attempt to cancel this contract, even paying for the taxi rides all over Puerto Vallarta following Mayan Escape's directions to go to their sales location, and then to their business office. Mayan Escape should have followed Mexican law, allowing for us to cancel at that time, and not making us incur all these mailing costs. These are clearly costs resulting from Mayan Escape violating Mexican law and should be refunded.

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

1. we requested cancellation in accordance with Mexican law not once, but three times
2. Because Mayan Escape misrepresented themselves as a U.S. company in a deliberate attempt to mislead us at the sales presentation.

Since we made every attempt to cancel this contract in accordance with both Mexican and U.S. laws, we have not opened the vacation package material sent to us. I would guess that we would find that the material in the package will not be exactly what the salesman promised us either. Other Americans who I have talked to, and who are also filing complaints with PROFECO, have said that the sales presentation and the vacation package material are different.

Thank you very much for considering our claim and please contact us by phone at 714-697-8576 or by email at jwsigler@sws-llc.com should you have any questions or need additional information.

My wife and I have vacationed in your country several times now, but this experience leaves us wondering whether we will return again. We both have very stressful jobs, and our vacation should have been a time to relax and unwind. If Mayan Escape's product is of real value, it should sell itself and they should not have this attitude of refusing to accept customer's requests to cancel. When we returned to the sales location within only four hours and requested to cancel, there should have been no excuses. At that time they had incurred no expenses, nor processed any paperwork. When we went to the trouble of returning three days later as requested, going to their sales location and then to their business office, this matter should have been handled and finished. Their attitude of "once you sign, too bad sucker" really spoils our opinion of Mexican businesses, and this entire affair leaves us with mixed feeling about your country as a whole. While we will have no problem praising the Mexican Government and their protection of the American tourist should PROFECO up-hold Mexican laws, I would think that my advise to other American would be to avoid any possibility of having to deal with a similar problem and stay away from all Mexican timeshare type business. It is too bad that one bad company can ruin the reputation of an entire industry.

Regards,

Mr. John (husband)

Mrs. Ann(wife)

August 24, 2003

ATTACHED MATERIAL

1. VHS videotape proving I returned to Mayan Escape to request a cancellation.
2. CDROM containing digital copies of key portion of the VHS videotape.
3. Appendix A – Copy of our Mayan Escape contract where they say this contract is covered by the Federal Consumer Protection Agency; although they misrepresented this as a U.S. organization. A copy of credit card slip showing Mayan Escape misrepresented themselves as a U.S. company with a San Diego, California address.
4. Appendix B – Listing of the video files on the CDROM and the key points each file shows.
5. Appendix C – Cancellation authority letter from my wife to Mayan Escape which they refused to accept, and copy of email sent July 3rd to document my attempt to cancel the previous day.
6. Appendix D – Vacation package mailing label, UPS tracking information, and Mayan Escape fax, proving their vacation package was mailed after they clearly knew I want to cancel.
7. Appendix E – Copies of emails sent to, and received from PROFECO.