

**Jon Leibowitz,**  
**Chairman, United States Federal Trade Commission**

**Jerry Brown**  
**Attorney General, California**

Dear FTC Chairman Leibowitz and California Attorney General Brown:

Pyramid Scheme Alert and Fraud Discovery Institute join voices to formally ask that you initiate investigations of the sales company, Medifast Inc. (NYSE: MED), and in particular its multi-level marketing division, Take Shape for Life.

The recent prosecution and settlement of the California Dept. of Justice case against a similar company, Your Travel Biz.com (OBB: YTBLA.OB), establishes a standard for business practice and law enforcement that we ask you to apply also to this company.

The points of similarity between these two companies include:

1. Both identify themselves as “multi-level marketing” companies that offer all consumers an “income opportunity” based upon selling their product and recruiting other consumers into the business opportunity.
2. Both companies charge a fee of hundreds of dollars for the opportunity to earn income from reselling the income opportunity.
3. Both employ 10-levels of pyramid recruiters, which grants enormous financial leverage to the top recruiters while dooming the latest recruits to positions of loss unless they are able to build their own “downline” of new consumer/investors.
4. Both employ an “endless chain” incentive to consumers for investing in the business and purchasing the products. Regardless of market size and saturation in any given area both companies promote continuous and unlimited recruitment of more sales people.
5. Both utilize pay plans that drive endless chain recruiting activity over retail sales. The plans pay more to the recruiters than the retailers and apply payment formulas that transfer the greater share of total payments to the top levels of the pyramid.
6. Both companies showed remarkable growth in the midst of an economic downturn and within respective industries and product sectors that are contracting. Such dramatic upturns under these conditions are classic red flags.

A key reason for an investigation is the lack of transparency for consumers and shareholders who are solicited to invest in the Medifast “business opportunity” and securities. The same lack of transparency, which constitutes deception, was a cause for the 2007 FTC action against another multi-level marketing company, Burnlounge, Inc., which also charged consumers for the right to sell an endless chain income opportunity. In that case, the FTC alleged that Burnlounge “made deceptive earnings claims, and failed to disclose that most consumers don’t receive substantial income, but lose money.”

We, therefore, respectfully ask that requirements be applied to *Take Shape for Life* that were required in the settlement between the California Attorney General and Your Travel Biz.com and in the Burnlounge settlement with the FTC.

Take Shape for Life recruits consumers into its “business opportunity” without providing consumers with the basic information needed to do due diligence. Though the

company's viability depends on selling an income opportunity to consumers to become "coaches," neither consumers nor shareholders have information about the financial status of the coaches, their incomes, turnover rates, recruitment rates, profitability, costs, or odds for success. Among disclosures required in the YTB settlement, which are not provided to consumers or shareholders of Medifast, include:

- Median average income of sales representatives.
- Typical costs incurred
- Number of sales representatives who had quit the business
- Total number of sales representatives active and inactive.
- Percentage of sales representative who did not receive any compensation
- A statement that later recruits do not have the same chance for success that earlier ones do.

The settlement with Your Travel Biz.com also addressed a financial factor that is fundamental to legitimacy. This factor is how much of the company's total revenue is generated directly and ultimately from the sales representatives versus retail consumers.

We request that Medifast be required to disclose this basic and critical piece of information to both consumers and shareholders. In other words, while we applaud the effort of the California Attorney General and the renewed concern of the FTC to crack down on material non disclosures of certain income promises to potential recruits (as evidenced by the Proposed Business Opportunity Rule), we would simply request that a perception of detection and a perception of prosecution begin through the consistent application of what lead to the YTB action—specifically that the abovementioned disclosures be ordered by law enforcement to be made. In fact on page 16 of Medifast's Inc.'s most recent 10K, it states about the potential of these mandatory disclosures that: *"...should the governing body alter or enforce the law in an unanticipated way, there may be a negative result on the company's operations."*<sup>1</sup>

In the financial markets, lack of regulatory oversight resulted in abuse and debased standards on Wall Street. The same consequences occur on Main Street as millions of consumers are solicited to invest in multi-level marketing "business opportunities." Oversight and regulation are more needed than ever during the current Recession. It is worth noting that both Your Travel Biz.com and Take Shape or Life have been promoted as safe havens in troubled economic times.

We respectfully request your immediate responses.

Sincerely,

Robert L. FitzPatrick  
Pyramid Scheme Alert

Barry Minkow  
Fraud Discovery Institute

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<sup>1</sup> Please see [http://www.sec.gov/Archives/edgar/data/910329/000114420409014237/v142765\\_10k.htm](http://www.sec.gov/Archives/edgar/data/910329/000114420409014237/v142765_10k.htm).