

Complaint

104 F.T.C.

IN THE MATTER OF

THOMAS A. DARDAS

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3144. Complaint, Oct. 1, 1984—Decision, Oct. 1, 1984*

This consent order requires Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., to cease representing that any weight control or weight loss product or service can perform in any way or has any benefit, unless such representations are substantiated by reliable and competent evidence. Mr. Dardas is also prohibited from misrepresenting the terms and conditions of guarantees offered in connection with any weight control or weight loss product or service; representing that any such product or service is guaranteed without prominently disclosing the identity of the guarantor and the conditions and limitations of the guarantee; and the manner in which the guarantor will perform guaranteed obligations. Additionally, Mr. Dardas is required, for a period of three years, to maintain records substantiating claims covered by this order; retain records detailing refund requests; and notify the Commission of any change in his employment.

Appearances

For the Commission: *Elaine Kolish.*

For the respondent: *Mark Miller, Gunn, Lee & Jackson*, San Antonio, Texas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Thomas A. Dardas, hereinafter referred to as respondent, individually and as an officer of Acu-Form Weight Control Centers, Inc., has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Acu-Form Weight Control Centers, Inc., hereinafter referred to as the corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4151 Southwest Freeway, Suite 410, Houston, Texas. The corporation filed

a bankruptcy petition pursuant to Chapter 7 of Title 11 of the United States Code on August 2, 1983.

PAR. 2. Thomas A. Dardas is an individual and is an officer of the corporation. He formulates, directs, and controls the acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is 11211 Valley Spring, Houston, Texas.

PAR. 3. Respondent, through the corporation, has engaged in the distribution, advertising, and sale of weight loss or weight control products and services sold under the name Acu-Form ear mold and has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, through the corporation, has disseminated and caused the dissemination of certain advertisements for the Acu-Form ear mold.

PAR. 5. Respondent, through the corporation and by means of the advertisements referred to in Paragraph Four, examples of which are attached hereto as Exhibits A-E, has made the following and other statements concerning the characteristics, performance and efficacy of ACU-FORM ear molds:

a. Now, with the ACU-FORM ear mold, you can lose weight—quickly, safely, effortlessly! No drugs, needles or discomfort. No restrictions on your lifestyle. The Acu-Form ear mold simply suppresses your appetite. You eat less and lose weight.

b. THE REDUCING AID YOU WEAR IN YOUR EAR (headline) The ACU-FORM ear mold is different from any other weight loss program. . . . The ACU-FORM ear mold actually decreases your appetite and lets you lose weight—quickly, safely and with no limits on your lifestyle!

c. An ACU-FORM ear mold, custom fitted to your ear, puts you in control of your appetite and weight for life. . . .

d. The ACU-FORM ear mold uses the body's own reflex mechanism to give you control of your appetite and weight. There are more than 200 clusters of invisible nerve endings in the shell of your ear which are specific acupuncture receptor points that can affect your habits. The specific points to modify your appetite and eating habits are stimulated by the ACU-FORM ear mold which remains in your ear and is virtually undetectable.

e. BEFORE YOU READ THIS ADD PRESS LIGHTLY ON YOUR RIGHT EAR. (headline) Sound easy enough? That's all you do to help yourself lose weight—when you wear the unique Acu-Form ear unit.

f. Granted U.S. Patent number 4,073,296, the clinically tested ACU-FORM ear mold is fast and effective.

PAR. 6. Through the advertisements referred to in Paragraph Four, including the statements set forth in Paragraph Five (a)-(e) and others, respondent, through the corporation, has represented, directly or by implication, that:

a. The Acu-Form ear mold is an effective means of weight loss.

b. The Acu-Form ear mold physiologically decreases or suppresses the wearer's appetite.

c. The Acu-Form ear mold gives the wearer permanent, life-time control over his or her weight.

PAR. 7. By the means of the advertisements referred to in Paragraph Four, respondent, through the corporation, has represented, directly or by implication, that at the time of making such representation, the corporation possessed and relied upon a reasonable basis for the representations set forth in Paragraph Six.

PAR. 8. In truth and in fact, the corporation did not possess and rely upon a reasonable basis for making such representations. Therefore, the representation set forth in Paragraph Seven was false and deceptive.

PAR. 9. By means of the statements set forth in Paragraph Five (f) and others, respondent, through the corporation, has represented that the Acu-Form ear mold's ability to suppress or decrease the wearer's appetite has been proven through clinical tests.

PAR. 10. In truth and in fact, the Acu-Form ear mold's ability to suppress or decrease the wearer's appetite has not been proven through clinical tests. Therefore, the representation set forth in Paragraph Nine was false and deceptive.

PAR. 11. Respondent through the corporation and by means of the advertisements referred to in Paragraph Four has made the following and other statements concerning a money-back guarantee for Acu-Form ear molds:

a. If you want to lose weight, remember Acu-Form Weight Control Centers offer a 100% money back guarantee. You must lose weight or your money will be refunded in full.

b. Money Back Guarantee.

PAR. 12. Through the use of the statements set forth in Paragraph Eleven and others, respondent, through the corporation, has represented, directly or by implication, that the money-back guarantee was unconditional.

PAR. 13. In truth and in fact, there were significant conditions attached to the money-back guarantee, including, but not necessarily limited to the following, consumers must have (a) followed the Acu-Form Diet Handbook and (b) returned to the location of their purchase during its normal business hours to be weighed and counseled for six consecutive weeks following delivery of their device. Therefore, the representation set forth in Paragraph Twelve was false and deceptive.

PAR. 14. Respondent's use of the aforesaid unfair and deceptive acts

and practices has had the capacity and tendency to mislead consumers and to induce consumers to purchase Acu-Form ear molds.

PAR. 15. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

FAT ☐

THIN ☒

THE CHOICE IS YOURS

Money Back Guarantee



Now, with the ACU-FORM™ ear mold, you can lose weight — quickly, safely, effortlessly! No drugs, needles or discomfort. No restrictions on your lifestyle. The ACU-FORM™ ear mold simply suppresses your

appetite. You eat less and lose weight.

You've probably lost weight with other methods and then gained it back, right? With the ACU-FORM™ ear mold, you'll have control over your weight for the rest of your life! Choose to lose weight now. The ACU-FORM™ ear mold makes it easy!

ACU-FORM™

○ Weight Control Centers ○
for the Thin of it

Katy Freeway
468-3114

Meyerland
667-5511

Clear Lake
678-1886

FIA 1950/1-45
440-5511

Gulf Freeway
643-0041

S.W. Fwy
at Cessport
776-9501

110th St.
Hawthorne
543-1111

Shadel 10 E
451-0141

Call now for free consultation. All Certificates available.



EXHIBIT B

ACU-FORM™



THE REDUCING AID YOU WEAR IN YOUR EAR.

The ACU-FORM™ ear mold is different from any other weight control program. It applies the science of acupuncture to weight control, without the discomfort of piercing the skin. The ACU-FORM™ ear mold actually decreases your appetite and lets you lose weight... quickly, safely and with no limits on your lifestyle!

The ACU-FORM™ ear mold is patented by a doctor. It's so comfortable, you'll hardly know you're wearing it, and neither will anybody else! Now you can get thin and stay thin.

Money Back Guarantee

Call now for
free consultation.
Gift Certificates available.

8111 Mesa Dr.
Suite 120
Austin
715-6660

Centers in Florida, Georgia,
Missouri, Tennessee, Texas and Virginia

ACU-FORM™

Weight Control Centers 

for the Thin of it

For more information call
1-800-462-8255




Copyright 1982 by ACU-Form Weight Control Centers, Inc. U.S. Patent No. 4,273,296

EXHIBIT C

NEVER BE FAT AGAIN

AN ACU-FORM™ EAR MOLD, CUSTOM-FITTED TO YOUR EAR, PUTS YOU IN CONTROL OF YOUR APPETITE AND WEIGHT FOR LIFE...WITHOUT SHOTS, DRUGS, NEEDLES OR CRASH DIETS.



The ACU-FORM™ method uses a patented weight control device based upon the ancient science of acupuncture but without the discomfort of piercing the skin.

Either manually or automatically, the ACU-FORM™ or ELECTRO ACU-FORM™ ear mold gently stimulates precise acupressure points on your ear to help you overcome your desire to eat. You must lose weight with an ACU-FORM™ ear mold, or your money will be refunded in full — 100% guaranteed.

Call today for your free consultation. And bring along a friend who smokes. The ACU-FORM™ method can help smokers, too.

Call for free consultation. Gift Certificates available.

Katy Freeway
468-3114

Meyerland
Galleria
667-5511

I-10 W.
Mason Rd.
578-1835

Jones Rd.
FM 1963
890-8435

Uvalde I-10 E.
451-0144

Gulf Freeway
643-0041

S.W. Frwy.
at Gessner
776-9501

FM 1960 I-45
440-5511

Clear Lake
338-1586



Now available!

ACU-FORM™ Derma Patch
Only \$49.95



ACU-FORM™

○ Weight Control Centers ○
for the Thin of it SM

For franchise information, call 1-800-442-8255

U.S. Patent No. 4,073,294

EXHIBIT D



LIFETIME WEIGHT CONTROL

Compare the ACU-FORM Ear Mold with other weight loss methods you may have tried or considered.

	ACU-FORM EAR MOLD	OTHER METHODS
MONEY BACK GUARANTEE	YES	YES
WORKS FOR LIFE	YES	NO
CONTINUING COSTS	NO	YES
Effect on Polished Dentures	NO	YES
Effect on Natural Teeth	NO	YES
Effect on Gum Tissue	NO	YES





Get the most out of your ACU-FORM Ear Mold. It's the safe, painless, drug-free way to lose weight easily and keep it off permanently. And it works daily for thousands. And it carries a money-back guarantee.

SAY "GOODBYE" TO FAT FOR LIFE

The ACU-FORM™ ear mold was invented and patented by Dr. F. J. McCall. It applies the centuries-old science of acupuncture to weight control, but without the discomfort of piercing the skin.

The ACU-FORM™ ear mold uses the body's own reflex mechanism to give you control of your appetite and weight. There are more than 200 clusters of invisible nerve endings in the shell of your ear which are specific acupuncture receptor points that can affect your habits. The specific points to modify your appetite and eating habits are stimulated by the ACU-FORM™ ear mold which remains in your ear and is virtually undetectable.

After an extensive training program, our technicians are certified to make the impression required to produce the ACU-FORM™ ear mold that fits your ear precisely. A unique plastic material is used to make an impression of your outer ear. This safe, painless process takes just 10 minutes.

The technician will examine the impression to be certain that it conforms to your ear. It will then be sent to the laboratory where a translucent ACUFORM™ ear mold is made. Surgical grade stainless steel stimulators are imbedded in the mold at the precise acupuncture points for your ear.

When the completed mold is returned from the laboratory, the technician will check it for fit and comfort and enroll you in our Weight Control Program.

That's all there is to it. But it means you are on your way to a more fulfilling life with control of your appetite and weight.

As you begin to reduce to your most desirable weight, you will feel an increased sense of physical well-being with improved self-assurance and the happiness that goes with them.

We hope that you will share your knowledge of the ACU-FORM™ ear mold with your friends and relatives who may need help in controlling their weight.



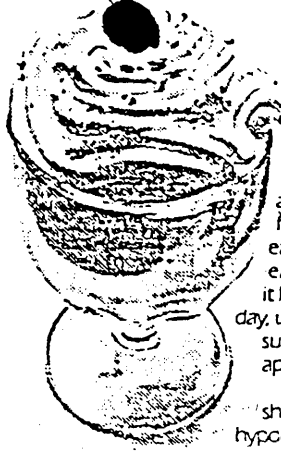
Dr. McCall is President of McCall Research Development Laboratories, Ltd. and an author and lecturer who has many patents on prosthetics. He has a Ph.D. in Diet and Nutritional Physiology, as well as Naturopathy, holds a degree of Doctor of Medicine and is a Staff Member and Instructor at The Chinese Acupuncture Hospital, Taiwan, President of the American Chapter of the Chinese Acupuncture Society, holder of the Certificate of Merit medal First Class Acupuncture, conferred Taipei City, Taiwan, 1973.

"ACU-FORM" and "ACU-MOLD" are registered trademarks of ACU-FORM Weight Control Centers, Inc.

Copyright 1977 by Acu-Form Weight Control Centers, Inc.

EXHIBIT E

**BEFORE YOU
READ THIS AD,
PRESS LIGHTLY
ON YOUR
RIGHT EAR.**



Sound easy enough?

That's all you do to help yourself lose weight — when you wear the unique Acu-Form™ ear unit.

Acu-Form is a comfortable, inconspicuous clear acrylic form custom-fitted to you, and easily taken out at the end of each day. Patented by a doctor, it helps thousands reduce every day, using the principles of acupressure to help you decrease your appetite.

Without pills. Without shots. Without exercise. Without hypnosis. And without crash or fad dieting.

Best of all, you have a life-long program with just one reasonable initial cost.

For a free, no obligation consultation, call the Acu-Form Center nearest you. Now.

642-0610
Springfield

984-6255
Rockville

448-8890
Tysons Corner

ACU-FORM™
WEIGHT CONTROL CENTERS

© 1982, Acu-Form Weight Control Centers, U.S. Patent No. 4,073,296

MONEY BACK GUARANTEE: You must lose weight with Acu-Form the first week or money's refunded in full.

Visa and MasterCard

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of the complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent, his attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Thomas A. Dardas is an officer of Acu-Form Weight Control Centers, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business located at 4151 Southwest Freeway, Suite 410, Houston, Texas. On August 2, 1983, Acu-Form Weight Control Centers, Inc., filed a bankruptcy petition pursuant to Chapter 7 of Title 11 of the United States Code. Respondent directed, formulated and controlled the policies, acts and practices of Acu-Form Weight Control Centers, Inc. Respondent's address is 11211 Valley Spring, Houston, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., and his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that any weight loss or weight control product or service is effective, is able to perform in any respect, or has any characteristic, feature, attribute, or benefit unless at the time that such representation is made respondent possesses and relies upon reliable and competent evidence that substantiates the representation; *provided, however,* that to the extent the evidence of a reasonable basis consists of tests, analyses, research, studies or any other materials based on the expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for the purposes of this order only if those tests, analyses, research, studies, or other materials are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent Thomas A. Dardas, individually and as an officer of Acu-Form Weight Control Centers, Inc., and his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from:

a. misrepresenting, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, the terms of any guarantee;

b. representing, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any product or service marketed for weight loss or weight control in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that any such product or service is guaranteed unless:

(1) the identity of the guarantor, the nature, extent, and material conditions of the guarantee, and the manner in which the guarantor will perform thereunder are clearly and prominently disclosed; and

(2) the guarantor does in fact perform all of the obligations under the terms of the guarantee as represented.

III.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that for a period of three (3) years from the date of service of this order respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with each new business or employment.

IV.

It is further ordered, That for three (3) years after receiving any request for a refund in connection with the sale of any weight control or weight loss product or service, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following records:

- a. the name and address of each customer requesting the refund;
- b. the date that respondent received the request for the refund;
- c. if a refund was granted, a copy of the request (if written), the amount of the refund and date that it was sent to the customer;
- d. if a refund was denied, a copy of the request (if written) and a copy of the written explanation of the denial sent to the customer.

V.

It is further ordered, That respondent shall maintain for three (3) years after the date of the last dissemination and upon request make available to the Federal Trade Commission for inspection and copying all materials relied upon in disseminating any representation covered by this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
THE SPERRY & HUTCHINSON COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8671. Final Order, Sept. 18, 1973—Modifying Order, Oct. 3, 1984

After reviewing the "Request To Reopen And Modify Order" filed by The Sperry & Hutchinson Company ("S&H"), the Commission concluded that it was in the public interest to set aside Section I of a Consent Order issued on September 18, 1973, 83 F.T.C. 478, which required the company to redeem its trading stamps for cash as well as merchandise. The company demonstrated that due to changed conditions, consumers can now readily avoid both S&H stamps and trading stamps in general in virtually all markets, and thus avoid any injury that might result from a merchandise-only redemption policy. S&H further demonstrated that the cash redemption requirement is also injuring its ability to compete against other suppliers of promotional services that are not subject to comparable restraints. Finding that the cash redemption provision no longer served any legitimate remedial purpose, the Commission reopened the matter and set aside Section I of the 1973 Consent Order.

ORDER MODIFYING DECISION AND ORDER ISSUED SEPTEMBER 18, 1973

On July 6, 1984, respondent The Sperry & Hutchinson Company ("S&H") filed a "Request To Reopen And Modify Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and modify the consent order issued on September 18, 1973 ("the order") by setting aside Section I. Section I of the order requires S&H to redeem its trading stamps for cash at the option of the stamp saver, at a fixed cash redemption value, if the stamps are presented in minimum quantities of 300.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening and modification of the order by setting aside Section I.

At the time of the original proceeding in this matter trading stamps were so pervasive in the marketplace that many consumers found them difficult if not impossible to avoid. In such a context, the cash redemption requirement of the order afforded stamp-savers an alternative to respondent's traditional policy of redeeming its stamps only for merchandise. S&H has demonstrated that conditions have now changed to the extent that consumers can readily avoid both S&H stamps and trading stamps in general in virtually all markets and, as