

IN THE MATTER OF

NINZU, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3566. Complaint, April 7, 1995--Decision, April 7, 1995*

This consent order requires, among other things, the Maryland-based marketers to possess and rely upon competent and reliable scientific substantiating evidence to support any performance, benefits, efficacy, or safety claims they make for any weight loss or weight control product or program or any acupressure device they market in the future.

Appearances

For the Commission: *Richard L. Cleland.*

For the respondents: *Michael B. Metzger*, President, Baltimore, MD.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., Order By Phone, Inc., and Auricle Clip, Inc., corporations; and Michael Metzger, individually and as an officer and director of said corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Ninzu, Inc. is a Maryland corporation doing business under its own name and under the names Davish Enterprises and Davish Health Products. Its principal place of business is located at 1 East Chase Street, Suite 200, Baltimore, Maryland.

Respondent Davish Merchandising, Inc. is a Maryland corporation with its principal place of business located at 1 East Chase Street, Suite 200, Baltimore, Maryland.

Respondent Order By Phone, Inc. is a Maryland corporation and the parent corporation of Auricle Clip, Inc. Its principal place of business is located at 1 East Chase Street, Suite 200, Baltimore, Maryland.

Respondent Auricle Clip, Inc. is a Maryland corporation with its principal place of business located at 1 East Chase Street, Suite 200, Baltimore, Maryland.

Respondent Michael Metzger is or was at relevant times herein an officer and director of Ninzu, Inc., Davish Merchandising, Inc., Order By Phone, Inc., and Auricle Clip, Inc. Individually or in concert with others, he participated in and/or formulated, directed and controlled the acts and practices of the respondent corporations. His address is 12135 Henson Garth, Owings Mills, Maryland.

PAR 2. Respondents have advertised, offered for sale, sold, and distributed the Ninzu, Auricle Clip, and B-Trim, acupressure weight-loss devices that clip onto the ear. The Ninzu, Auricle Clip, and B-Trim are devices within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

NINZU

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for the Ninzu, including but not necessarily limited to the attached Exhibits A and B. The aforesaid advertisements contain the following statements:

A. NO DIET! NO EXERCISE! LOSE 30 POUNDS IN 30 DAYS!

No conventional diet is better than any other. Don't kid yourself, they just do not work (Read the June issue of *Consumer Reports*).

NINZU™ is the first effortless weight loss product that really works. Now available in the U.S. You must be satisfied with your results in just 30 days or we will completely refund your money... no questions asked!

NINZU™ is a tiny acupressure device that fits snugly on your ear. This product utilizes the ancient science of acupressure to make you lose weight. It's safe and it works...we guarantee it.

NINZU™ does not involve the use of drugs. There are no needles, no shakes, no special diet foods to buy again and again. Wearing NINZU™ for less than 3 hours a day will produce dramatic results.

JOIN OUR LIST OF SATISFIED CUSTOMERS

I have tried every diet known to man. This is the first time I actually lost weight and I'm keeping it off. Mr. C.D. of Texas.

I lost 32 pounds last month by using NINZU. My husband says that I've never looked better. Mrs. J.R. of Ohio.

At first I thought it was a joke but after dropping 47 pounds in 2 months, I'm a true believer. Mr. T.U. of Maryland. (Exhibit A).

B. Would you put a needle in your ear to help you lose weight? Medical doctors in China use acupuncture every day to successfully help millions of patients.

Now for the first time in America you can actually lose weight using the proven principles of acupuncture without needles.

Introducing Ninzu, an amazing device guaranteed to help you lose weight by controlling your hunger. Just attach the small device to the triangular portion of your outer ear for one hour before eating, during the meal, and one hour after eating. It's completely painless, and totally effective. In just seconds your hunger pains disappear. You eat less, you lose weight quickly and safely.

Here's how it works. In Chinese medicine the hunger point is the tragus. The tragus is connected to the major nerve ending that controls your stomach and upper intestine. When you apply pressure to the nerve ending it actually inhibits your stomach's contractions. Your brain receives the signal that your stomach is full, reducing your craving. Imagine, no calorie counting, no diet shakes, no special fads, no pills or drugs. Just a safe, effective method that really works.

* * * *

"I dropped two dress sizes, so simple, yet so incredibly effective."

* * * *

"You can't notice it but I'm wearing it right now and I literally cut my food intake in half." (Exhibit B).

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that:

- A. Ninzu causes significant weight loss;
- B. Ninzu causes significant weight loss without the need to diet or exercise;
- C. Ninzu controls appetite or eliminates a person's craving for food; and
- D. Ninzu is scientifically proven to cause significant weight loss and control appetite.

PAR. 6. In truth and in fact:

- A. Ninzu does not cause significant weight loss;
- B. Ninzu does not cause significant weight loss without the need to diet or exercise;
- C. Ninzu does not control appetite or eliminate a person's craving for food; and
- D. Ninzu is not scientifically proven to cause significant weight loss and control appetite.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five. (A), (B), and (C), they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five (A), (B), and (C), respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for the Ninzu reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 10. In truth and in fact, testimonials from consumers appearing in advertisements for the Ninzu do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

AURICLE CLIP

PAR. 11. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for the Auricle Clip, including but not necessarily limited to the attached Exhibit C. The aforesaid advertisement contains the following statements:

AURICLE CLIP™

The Effortless Weight Loss Product

A Board Certified internist born in China has uncovered the secret of using acupressure for quick and effortless weight loss. The introduction of the Auricle Clip makes available to the public the work of Dr. Daniel S.J. Choy, a qualified medical professional. The Auricle Clip is the product that will make dieting obsolete.

Through the science of acupressure, the Auricle Clip allows the user to lose weight without having to think about calories or grams of fat. Now, people who have failed as dieters because they could not stand to deprive themselves of the foods they love, will be able to take control of their lives and become happier, thinner people.

The Auricle Clip attaches to a pressure point on the tragus, the triangular portion of the outer ear, where it slows the wave-like muscular movement of food from the stomach into the intestines (peristalsis). This simply means that the stomach thinks that it is half-full before the user even begins eating. After a few bites the user feels full. In effect, the stomach seems smaller so the user eats less.

The Auricle Clip does not involve the use of drugs. There are no needles, no shakes, no special diet foods to buy again and again. By wearing the Auricle Clip on the tragus of each ear a half hour before eating and one hour after eating the user will change his/her eating habits, which is the real key to losing weight and keeping it off. (Exhibit C).

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisement attached as Exhibit C, respondents have represented, directly or by implication, that:

- A. Auricle Clip causes significant weight loss;
- B. Auricle Clip causes significant weight loss without the need to diet;
- C. Auricle Clip controls appetite; and
- D. Auricle Clip is scientifically proven to cause significant weight loss and control appetite.

PAR. 13. In truth and in fact:

- A. Auricle Clip does not cause significant weight loss;
- B. Auricle Clip does not cause significant weight loss without the need to diet;
- C. Auricle Clip does not control appetite; and
- D. Auricle Clip is not scientifically proven to cause significant weight loss and control appetite.

Therefore, the representations set forth in paragraph twelve were, and are, false and misleading.

PAR. 14. Through the use of statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisement attached as Exhibit C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph twelve (A), (B), and (C), they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 15. In truth and in fact, at the time they made the representations set forth in paragraph twelve (A), (B), and (C), respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

B-TRIM

PAR. 16. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for the B-Trim, including but not necessarily limited to the advertisement attached as Exhibit D. The aforesaid advertisement contains the following statements:

SUCCESSFUL DIETING

(NAPS)--If you're ready to lose your share of the millions of pounds Americans are overweight, experts suggest you follow this sensible advice:

1. If you're thinking of a major weight loss, see a doctor before you start.

[DRAWING OF A WOMAN STANDING ON A BATHROOM SCALE
OVER THE FOLLOWING CAPTION: A modern invention based on the
ancient science of acupressure can reduce your craving for food.]

2. Make sure the diet you choose contains the proper amount of protein, fats, carbohydrates, water and vitamins. The U.S. Dept. of Health recommends that no more than 30 percent of your calories should come from fat.

3. Be aware of new techniques for dieters. One new product is reported to be able to help you lose weight without feeling hungry. Called B-Trim, this inexpensive acupressure product was developed by a Chinese born, board certified internist on the staff of two New York hospitals. When you attach a small, specially designed clip to the triangular portion of your outer ear, a message is sent to your brain via the vagus nerve that tells your stomach it is partially full. This effect makes dieting practically effortless. The device is worn for a half hour before and an hour after meals. (Exhibit D).

PAR. 17. Through the use of the statements contained in the advertisements referred to in paragraph seventeen, including but not necessarily limited to the advertisement attached as Exhibit D, respondents have represented, directly or by implication, that:

- A. B-Trim causes significant weight loss; and
- B. B-Trim reduces the user's craving for food and causes weight loss without the user feeling hungry.

PAR. 18. In truth and in fact:

- A. B-Trim does not cause significant weight loss; and
- B. B-Trim does not reduce the user's craving for food or cause weight loss without the user feeling hungry.

Therefore, the representations set forth in paragraph seventeen were, and are, false and misleading.

PAR. 19. Through the use of statements contained in the advertisements referred to in paragraph sixteen, including but not necessarily limited to the advertisement attached as Exhibit D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph seventeen, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 20. In truth and in fact, at the time they made the representations set forth in paragraph seventeen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

NO DIET! NO EXERCISE!

I lost 32 pounds last month by using NINZU. My husband says that I've never looked better.
Mrs. J.R. of Ohio.

At first I thought it was a joke but after dropping 47 pounds in 2 months, I'm a true believer.

Mr. T.U. of Maryland.

DS For the first time in 10 years I can't wait to wear my swim suit. Your product is terrific and I'll never have to diet again.
Ms. S.N. of New York.

NINZU™ is marketed world-wide by D.M.I., One East Chase Street, Suite 200, Baltimore, MD 21202, (410) 962-8221. The cost is only \$19.95 per pair of NINZU™ plus \$2.99 a/h. See

LOSE THE WEIGHT AND SAVE YOUR MONEY, because there is nothing more for you to buy... Remember, you have nothing to lose but weight. We guarantee it.

I have tried every diet known to man. This is the first time I actually lost weight and I'm keeping it off.
Mr. C.D. of Texas.

BONUS - A free gift for the first 1000 orders that are received from this ad.

YOU'LL BE AMAZED AT THE RESULTS!!!

**ONLY
\$19.⁹⁵**

**MONEY BACK
GUARANTEE**

~~Ys • Specs • Meals • Specs • Drinks • Exercise~~

CALL 1-800-289-1700

NINZU, INC. • One East Chase Street, Suite 200, Baltimore, MD 21201
YES! I do want to lose weight fast! Please rush NINZU™ today. If I am not fully satisfied,
I can return them within 90 days for a full refund.

Check/Money Order _____ pairs) of NIBCUZU ● \$19.95 pr _____
_____ Shipping & Handling ● \$1.00 pr _____

(Cholesterol contains only 5% water sol.)

Discover

Signature _____

Rep. Date _____ Card # _____

Name _____

City _____ State _____ Zip _____

Phase _____ WT _____

Complaint

119 F.T.C.

EXHIBIT B

DAVISH ENTERPRISES

"NINZU" 2 MIN.

VER. A \$19.95

1-800-STAY TRIM

7/1/93

Would you put a needle in your ear to help you lose weight? Medical doctors in China use acupuncture every day to successfully help millions of patients.

Now for the first time in America you can actually lose weight using the proven principles of acupuncture without needles.

[ON SCREEN: 1-800-STAY TRIM (1-800-782-9874)]

Introducing Ninzu, an amazing device guaranteed to help you lose weight by controlling your hunger. Just attach the small device to the triangular portion of your outer ear for one hour before eating, during the meal, and one hour after eating. It's completely painless, and totally effective. [ON SCREEN: 1-800-STAY TRIM (1-800-782-9874)]. In just seconds your hunger pains disappear. You eat less, you lose weight quickly and safely.

Here's how it works. In Chinese medicine the hunger point is the tragus. The tragus is connected to the major nerve ending that controls your stomach and upper intestine. When you apply pressure to the nerve ending it actually inhibits your stomach's contractions. Your brain receives the signal that your stomach is full, reducing your craving. Imagine, no calorie counting, no diet shakes, no special fads, no pills or drugs. Just a safe, effective method that really works.

"Ninzu really change my life. It is so satisfying to feel good about myself again."

"I dropped two dress sizes, so simple, yet so incredibly effective."

"Since wearing the Ninzu I really can't wait to get dressed in the morning."

"You can't notice it but I'm wearing it right now and I literally cut my food intake in half."

The Chinese clip is based on 4000 years of ancient oriental medicine. It's totally safe and guaranteed to work. [ON SCREEN: Ted D. Annenberg, R.Ac., P.A., Registered Acupuncturist - Nutritional Medicine, Weight Loss, Food Allergist]

[ON SCREEN: 1-800-STAY TRIM (1-800-782-9874)]

Now Ninzu can be yours for only \$19.95. Best of all there's no additional purchases or refills. It's safe, painless, and it lasts forever.

"I can't believe how much money this little product has saved me, but best of all it works."

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Complaint

Ninzu comes with an iron-clad money-back guarantee. Try it for 90 days [ON SCREEN: 1-800-STAY TRIM (1-800-782-9874)] if you're not completely satisfied return them for a complete refund, no questions asked.

Ninzu for only \$19.95, order today. Call now 1-800-STAY TRIM, that's 1-800-782-9874 for credit card orders, or send check or money order for \$19.95 plus shipping to NINZU, Box 32088, Baltimore, Maryland 21208.

Ninzu comes with a 90 day money back guarantee. Order Ninzu now.

[ON SCREEN:

Visa, Master Card, American Express, Discover

Call Now 1-800-STAY TRIM

(1-800-782-9874)

or send check or money order for \$19.95 plus \$2.99 S+H to
NINZU, P.O. Box 32088, Baltimore, MD. 21208.

Free Gift Included

90 Day Money Back Guarantee

D.M.I. 1 E Chase Street, Suite 200, Baltimore, MD. 21202.]

EXHIBIT C

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ARTICLE CLIP

The Effortless Weight Loss Product

A Board Certified dietitian born in China has uncovered the secret of using acupuncture for quick and effortless weight loss. The introduction of the Article Clip makes available to the public the work of Dr. Daniel S.J. Choy, a qualified medical professional. The Article Clip is the product that will make dieting obsolete.

Through the science of acupuncture, the Article Clip allows the user to lose weight without having to lose appetite or calories or grams of fat. Now, people who have failed as dieters because they could not stand to deprive themselves of the foods they love, will be able to take control of their lives and become happier, thinner people.

The Article Clip attaches to a pressure point on the tragus, the angular portion of the outer ear, where it shows the wave-like muscular movement of food from the stomach into the intestines (peristalsis). The empty message that the stomach sends that of a signal before the user even begins eating. After a few days the user feels full. In effect, the stomach sends smaller to the user's ears less.

The Article Clip does not involve the use of drugs. There are no needles, no sharps, no special diet foods to buy again and again. By wearing the Article Clip on the tragus of each ear a half hour before eating and one hour after eating the user will change his eating habits so much is the real key to losing weight and keeping it off.

The Article Clip is mass-produced worldwide by Daniel Enterprises, One East Chicago Street, Suite 200, Eastmore, MD 21002. (800) 289-1700. The cost is \$39.95 per pair of Article Clips plus \$3.95 shipping.

**NO SPECIAL
DIET**

**NO SPECIAL
MEALS**

**NO SPECIAL
DRINKS**

100% Satisfaction Guaranteed

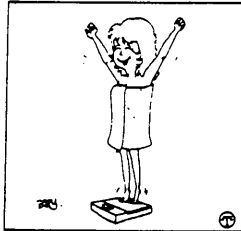
EXHIBIT D

EXHIBIT D

SUCCESSFUL DIETING

NAPS—If you're ready to lose your share of the millions of pounds Americans are overweight, experts suggest you follow this sensible advice:

1. If you're thinking of a major weight loss, see a doctor before you start.



A modern invention based on the ancient science of acupressure can reduce your craving for food.

2. Make sure the diet you choose contains the proper amount of protein, fats, carbohydrates, water and vitamins. The U.S. Dept. of Health recommends that no more than 30 percent of your calories should come from fat.

3. Be aware of new techniques for dieters. One new product is reported to be able to help you lose weight without feeling hungry. Called B-Trim, this inexpensive acupressure product was developed by a Chinese born, board certified internist on the staff of two New York hospitals. When you attach a small, specially designed clip to the triangular portion of your outer ear, a message is sent to your brain via the vagus nerve that tells your stomach it is partially full. This effect makes dieting practically effortless. The device is worn for a half hour before and an hour after meals.

B-Trim is available by sending a check for \$39.95, plus \$3.95 S&H to: Davish Health Products, One East Chase Street, Suite 200, Baltimore, MD 21202; or by calling (800) 289-1700.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of 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 respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have 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 Ninzu, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Respondent Davish Merchandising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Respondent Order By Phone, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Respondent Michael B. Metzger is an officer and director of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at the above- stated address.

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

ORDER

For the purposes of this order:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been 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.

2. "*Acupressure device*" shall mean any product, program, or service that is intended to function by means of the principles of acupressure.

I.

It is ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Ninzu, Auricle Clip, B-Trim or any other acupressure device 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:

- A. Such product causes significant weight loss;
- B. Such product causes significant weight loss without the need to diet or exercise;
- C. Such product controls appetite, eliminates a person's craving for food, or causes weight loss without the user feeling hungry; or
- D. Such product is scientifically proven to cause significant weight loss and control appetite.

II.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any weight-loss or weight-control product or program or any acupuncture device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy, or safety of such product, program, or device unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any

weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product, program, or device represents the typical or ordinary experience of members of the public who use the product, program, or device unless this is the case.

IV.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

V.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call

into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc. shall:

A. Within thirty (30) days after service of this order, provide a copy of this order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of five (5) years from the date of issuance of this order, provide a copy of this order to each of respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VII.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That respondent, Michael B. Metzger, shall, for a period of five (5) years from the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance

of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

IX.

It is further ordered, That respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, and Michael B. Metzger, individually and as an officer and director of said corporations, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ALLIANT TECHSYSTEMS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3567. Complaint, April 7, 1995--Decision, April 7, 1995

This consent order permits, among other things, Alliant Techsystems Inc. ("Alliant"), a Minnesota-based defense contractor, to acquire Hercules Inc.'s propellant division, Hercules Aerospace Company, under certain conditions, and requires Alliant to prevent its newly acquired propellant division from sharing non-public information with Alliant's ammunition and munitions division. Alliant also has to notify its propellant customers of the Commission order before obtaining any non-public information from them.

Appearances

For the Commission: *Laura A. Wilkinson and Ann Malester.*

For the respondent: *Ronald A. Bloch and Timothy J. Waters,*
McDermott, Will & Emery, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Alliant Techsystems Inc. ("Alliant"), a corporation subject to the jurisdiction of the Federal Trade Commission, has agreed to acquire certain stock and assets of Hercules Incorporated, a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: