

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

NINZU, INC.,  
DAVISH MERCHANDISING, INC.,  
ORDER BY PHONE, INC.,  
corporations, and  
MICHAEL B. METZGER,  
individually and as an  
officer and director of  
said corporations.

File No. 932 3343

AGREEMENT CONTAINING  
CONSENT ORDER TO  
CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of 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, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between 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., by their duly authorized officer; and Michael B. Metzger, individually and as an officer and director of said corporations, and counsel for the Federal Trade Commission that:

1. Proposed 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.

Proposed 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.

Proposed 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.

Proposed 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. He resides at 12135 Henson Garth, Owings Mills, Maryland.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the

order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

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 acupuncture 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 C.F.R. § 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.

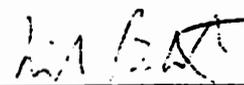
IT IS FURTHER ORDERED that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, and Michael B. Metzger, individually and as an officer and director of said corporations, shall, within 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.

Signed this 6<sup>th</sup> day of August, 1994

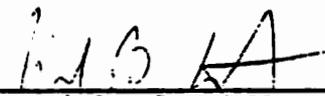
NINZU, INC.

By   
Michael B. Metzger  
President

DAVISH MERCHANDISING, INC.

By   
Michael B. Metzger  
President

ORDER BY PHONE, INC.

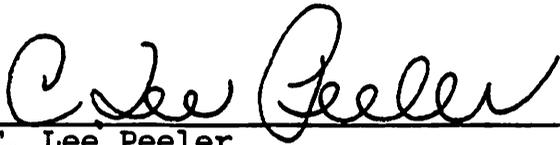
By   
Michael B. Metzger  
President

  
Michael B. Metzger, individually and  
as an officer and director of  
said corporations

  
Richard L. Cleland  
Counsel for the  
Federal Trade Commission

  
Brian A. Dahl  
Counsel for the  
Federal Trade Commission

APPROVED:



C. Lee Peeler  
C. Lee Peeler  
Associate Director  
Division of Advertising Practices



Christian S. White  
Christian S. White  
Acting Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of )  
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)  
)  
NINZU, INC., )  
DAVISH MERCHANDISING, INC., )  
ORDER BY PHONE, INC., ) DOCKET NO.  
corporations, and )  
MICHAEL B. METZGER, )  
individually and as an )  
officer and director of )  
said corporations. )  
)  
)  
)  
)

COMPLAINT

The Federal Trade Commission, having reason to believe that Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, 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 ("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 ONE: Respondent Ninzu, Inc. is a Maryland corporation with its principal place of business located at 1 East Chase Street, Suite 200, Baltimore, Maryland 21202.

Respondent Davish Merchandising, 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 21202.

Respondent Order By Phone, Inc. is a Maryland corporation doing business under its own name and under the name Auricle Clip, Inc. Its principal place of business is located at 1 East Chase Street, Suite 200, Baltimore, Maryland 21202.

Respondent Michael B. Metzger is or was at relevant times herein an officer and director of Ninzu, Inc., Davish Merchandising, Inc., and Order By Phone, 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 Heneson Garth, Owings Mills, Maryland 21117.

PARAGRAPH TWO: 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.

PARAGRAPH THREE: 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

PARAGRAPH FOUR: 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.

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. (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)

**PARAGRAPH FIVE:** 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.

**PARAGRAPH SIX:** 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.

**PARAGRAPH SEVEN:** 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.

PARAGRAPH EIGHT: 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.

PARAGRAPH NINE: 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.

PARAGRAPH TEN: 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

PARAGRAPH ELEVEN: 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)

**PARAGRAPH TWELVE:** 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.

**PARAGRAPH THIRTEEN:** 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.

PARAGRAPH FOURTEEN: 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.

PARAGRAPH FIFTEEN: 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

PARAGRAPH SIXTEEN: 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)

**PARAGRAPH SEVENTEEN:** Through the use of the 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:

- 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.

**PARAGRAPH EIGHTEEN:** 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.

**PARAGRAPH NINETEEN:** 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.

PARAGRAPH TWENTY: 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.

PARAGRAPH TWENTY-ONE: 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.

THEREFORE, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 1994, has issued this complaint against respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL:



EXHIBIT B

9323343  
B164791

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 changed 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."

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

# **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 in-

testines (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.

The Auricle Clip is marketed world-wide by Davish Enterprises, One East Chase Street, Suite 200, Baltimore, MD 21202, (800) 269-1700. The cost is \$39.95 per pair of Auricle Clips plus \$3.95 s/h.



**N.O. SPECIAL MEDICATION**



**N.O. SPECIAL MEALS**



**N.O. SPECIAL DRINKS**

**100% Satisfaction Guaranteed**



**AURICLE CLIP, INC.** Division of Order By Please  
One East Chase Street, Suite 200, Baltimore, MD 21202  
YES! I do want to see myself slim! Please send me Auricle Clips today!  
I am not sure whether I can receive them within 30 days for a full refund.

Check  Payment of Auricle Clip @ \$39.95  
 Charge Order  Payment of Shipping @ \$3.95  
 Visa  Payment of Shipping @ \$3.95  
 MasterCard  TOTAL  
 Other

Exp. Date \_\_\_\_\_ Card # \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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.

Analysis of Proposed Consent Order  
to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., Order By Phone, Inc. d/b/a Auricle Clip, Inc., and Michael B. Metzger.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising related to the sale of an acupressure device, marketed under the names Ninzu, Auricle Clip, and B-Trim, which clips onto the ear. The Commission's Complaint charges that proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., Order By Phone, Inc. d/b/a Auricle Clip, Inc., and Michael B. Metzger falsely represented that: (1) the Ninzu, the Auricle Clip, and the B-Trim cause significant weight loss; (2) the Ninzu causes significant weight loss without the need to diet or exercise; (3) the Auricle Clip causes significant weight loss without the need to diet; (4) the Ninzu controls appetite and eliminates a person's craving for food; (5) the Auricle Clip controls appetite; and (6) the B-Trim reduces the user's craving for food and causes weight loss without the user feeling hungry.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made those claims. The Complaint further alleges that proposed respondents falsely represented that the Ninzu and Auricle Clip are scientifically proven to cause significant weight loss and control appetite. Finally, the Complaint alleges that proposed respondents falsely represented 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 Ninzu.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that the Ninzu, Auricle Clip, B-Trim, or any other acupressure device: (1) causes significant weight loss; (2) causes significant weight loss without the need to diet or exercise; (3) controls appetite, eliminates a person's craving

for food, or causes weight loss without the user feeling hungry; or (4) is scientifically proven to cause significant weight loss and control appetite. The order defines "acupressure device" as "any product, program, or service that is intended to function by means of the principles of acupressure." Part II requires proposed respondents to possess competent and reliable scientific evidence before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss or weight-control product or program or any acupressure device. Part III prohibits proposed respondents from falsely claiming that endorsements or testimonials for any weight-loss or weight-control product or program or any acupressure device represent the typical or ordinary experience of members of the public who use the product, program, or device. Part IV prohibits proposed respondents from misrepresenting the results of tests or studies for any weight-loss or weight-control product or program or any acupressure device.

Part V requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part VI requires proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., and Order By Phone, Inc. d/b/a Auricle Clip, Inc. to distribute a copy of the order to current and future principals, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part VII of the proposed order, proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., 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 that may affect compliance with the order's obligations. Part VIII requires that proposed respondent Metzger, for a period of five (5) years, notify the Commission of any change in his business or employment. Part IX obliges proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.