

AUST COMPETITION &  
CONSUMER COMMISSION  
BRISBANE

- 6 OCT 2006

**NIGEL JOHN ROONEY  
LINDA ANN ROONEY  
P.O. BOX 12029,  
GEORGE ST,  
BRISBANE, QLD, 4003**

2<sup>nd</sup> October, 2006

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION,  
P.O. BOX 10048,  
ADELAIDE ST. POST OFFICE,  
BRISBANE, QLD, 4000**

Dear Sir/Madam,

Please find enclosed the following submission for third line forcing notification:

- (1) Form G
- (2) Annexure "A" to Form G (Names & Address's of Franchisees)
- (3) Annexure "B" (Trade Mark)
- (4) Annexure "C" (Franchise Agreement)
- (5) Cheque for lodgement fees of \$100.00

## **Submission for Exclusive Dealing Notification – Third Line Forcing**

**For NIGEL JOHN ROONEY & LINDA ANN ROONEY**

### **1. Notification:**

This submission has been prepared to assist the Commission in its consideration of the Exclusive Dealing Notification.

### **2. Confidentiality**

The detailed arrangements between Mr Nigel Rooney and Linda Rooney (SAF) and its Franchisee set out in the attached Franchise Agreement are highly commercially sensitive.

Consequently for privacy, security and confidentiality of our Franchisees, we request that the Commission refrain from disclosing any information in Annexure “A” (Franchisee contact details – names and address’s) and Annexure “C” SAF Franchise Agreement and that Annexure “A” and “C” be excluded from the public register on confidentiality grounds.

### **3. BACKGROUND TO SEAL-A-FRIDGE FRANCHISE’S IN AUSTRALIA**

Nigel Rooney and Linda Rooney (The Franchisor) has developed and is the proprietor of a system for mobile refrigeration seal replacement and manufacture (the “system”) which as been operating under the name of Seal-A-Fridge since 1994. In 1997 Mr Rooney as Franchisor had previously sold a franchise in Darwin. This was the first Franchise sold by Mr Nigel Rooney and Linda Rooney as Franchisors. They later became directors of Seal-A-Fridge Pty Ltd , which has 30 Franchisees in Australia.

This “system” comprises of trade marks including the Seal-A-Fridge Mark Registration # 632127 (see Annexure “B”) a recognized design, equipment system, colour scheme, certain standards, specifications, procedures and policies, minimum quality standards for products offered, marketing systems for print, radio and television. Collectively, these elements are known as the Seal-A-Fridge “System.”

The Franchisor has granted the Franchise to Franchisee through a Franchise Agreement (see attachment "C") on the basis that:

- (a) *"The Franchisor has developed a concept of Refrigeration Seal Replacement and Manufacture (the "Seal-A-Fridge System"), which has been operating under the name "Seal-A-Fridge".*
- (b) *"The Franchisee understands and acknowledges that the "Seal-A-Fridge System" requires the adherence by Franchisees to all the Franchisors standards, specifications, procedures and policies"*
- (c) *"The Franchisee has requested the right to market the "Seal-A-Fridge System" upon the terms and conditions agreed between the parties and to use such marks as may be approved of by the Franchisor.*

The Seal-A-Fridge Franchise Agreement requires that under clause

#### **4A Authorized Products**

- a) *"The Franchisee shall offer to his customers all and only those products or service specified by the Franchisor from time to time. The Franchisee shall not offer for sale any non-approved products or services without the prior written consent of the Franchisor"*

Under clause,

#### **4C Operating Standards**

*"The Franchisee agrees not to deviate from the specifications, standards and procedures set by the Franchisor for the operation of the Franchise Business".*

Franchisees using the "Seal-A-Fridge System" manufacture a very specific product, being refrigeration door seals. The product and service is sold by Franchisees and is subject to a registered trademark (No. 632 127 registered on 14<sup>th</sup> June, 1994). The "Seal-A-Fridge System" is totally integrated with the manufacture of refrigeration door seals.

To protect the value and image of the trademark and for the purpose of protecting the overall image and reputation of the Seal-A-Fridge Franchise System, the Franchisor has set minimum quality standards on products used in the manufacture of refrigeration door seals.

### **Authorized Products or Services**

As defined by the Seal-A-Fridge Franchise Agreement, "Authorized Products or Services" means "*those products or services approved by the Franchisor for sale by the Franchisee as set forth from time-to-time in writing by the Franchisor*".

To gain the status of an "Authorized Product," the product must be approved by the Franchisor.

### **Seal-A-Fridge Minimum Quality Standards for Authorized Products**

These standards apply to all PVC Extrusion and Flexible Magnet Products used in the manufacture of refrigeration door seals. Where a product is available that meets the minimum standards, a Franchisee must purchase the product or products. If a product is not available that meets the minimum quality standards, then the Franchisee may purchase that product with the prior written consent of the Franchisor, until such times that a product can be sourced that meets minimum quality standards.

SAF requires Franchisees to sell only authorized products and services.

In order to negotiate the lowest cost supplies for Franchisees from suppliers, SAF needs Franchisees to purchase supplies only from nominated approved suppliers.

In the event that a supplier, is unable to provide supplies, then SAF will provide written consent to enable the Franchisees to purchase supplies from other suppliers until the original supplier is able to provide supplies.

We refer to the SAF Franchise Agreement entered into with the Franchisee (A copy of the Franchise Agreement is attached as Annexure "C")

**Clause's 1B, 1G, 2B, 4A, 4B, 4C.**

**The definitions of "Authorized Products or Services" , "Seal-A-Fridge Image", &"Seal-A-Fridge System"**

Seal-A-Fridge considers that these clauses and definitions are essential to the continued successful operation of the Franchise System for reasons which include the following:

**(1)** Seal-A-Fridge needs to protect the overall image and reputation of the "Seal-A-Fridge System" and Trade Mark.

- (2) Seal-A-Fridge prides itself on the quality of its products and is conscious of the need to maintain the same standard of quality supplied by all franchisees.
- (3) Seal-A-Fridge needs to maintain an image of quality which is instantly recognizable by its customers and potential customers.
- (4) The "Seal-A-Fridge system" is totally integrated with the manufacture of its only product being refrigeration door seals and its registered trademark.

#### **4. Public Benefit and Detriment, Competitive Effect & Substantial Lessening Of Competition**

Following are submissions on public benefit and detriment, competitive effect and substantial lessening of competition issues. We are happy to provide further submissions if the Commission requests.

##### **Public Benefit**

1. Bulk or volume discounts for supplies means that the supplies are provided at lower prices to its Franchisees, who in turn can supply the finished product at lower prices to the public.
2. The supply of the supplies is of a higher and more consistent quality.
3. The public will receive a high quality product which is standardized across the SAF Franchise Network.
4. Control over the source of the supplies helps SAF to ensure prompt and consistent delivery of supplies to Franchisees, who are then able to offer the public better service.
5. Due to the supplies being standardized throughout the SAF Network across Australia, a National Warranty Program can be implemented to give the public greater protection.
6. Due to the supplies being standardized throughout the SAF Network across Australia, any product recalls regarding safety concerns will be activated and initiated quickly providing greater protection to the public.

7. By ensuring that SAF Franchisees have a consistent stable and high quality supplier. This will ensure that the SAF Franchise Network across Australia can provide to the public in the future a high quality cost effective, environmental alternative other than purchasing a new refrigerator for around \$1000.00 instead if their seals are faulty they can have them replaced for around \$150.00.
8. By ensuring that our service remains a cost effective alternative the public can ensure that the Seals on their refrigerator are working properly – in turn their motor will function more efficiently benefiting the public by lower electricity bills. The lower electricity usage means a lower demand on electricity providers which in turn leads to lower greenhouse gas emissions, which helps the environment as a whole.

**Public Detriments, Competitive Effect and Substantial Lessening of Competition**

SAF considers that limited public detriment if any at all results from the proposed conduct as;

1. There are a large number of suppliers in the refrigeration door seal market at the manufacturing, wholesale and retail level. SAF considers that the market for refrigeration door seals is highly competitive on both a domestic and international level, therefore this conduct does not cause substantial lessening of competition.

Consumers are able to purchase refrigeration door seals from suppliers listed below, but not limited to those listed:

- (a) Original manufacturers of the equipment eg; Electrolux, Kelvinator, Westinghouse, Fisher & Paykel, Ignis, Sharp, General Electric, Philips, Admiral
- (b) Appliance spare parts suppliers
- (c) Refrigeration Mechanics
- (d) Appliance Repairers
- (e) Electricians
- (f) After market refrigeration door seal manufacturers.
- (g) Home handypersons.
- (h) Do-it-yourself Installations.
- (i) Online refrigeration parts suppliers domestic and international.

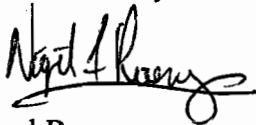
**Summary**

In conclusion, the conduct is not to lessen competition in any market, rather the purposes are to allow Franchisees the benefit of a bulk discount and to ensure that SAF maintains quality control over its Authorized Products and to protect the SAF trademark, brand, image and system.

If the Commission grants immunity afforded by this notification, as part of the SAF Compliance Program for the Trade Practices Act and the requirements of the Franchising Code of Conduct, SAF as Franchisor is aware of the requirement to disclose in the SAF Disclosure Document, any commission or rebate received through an Agreement with a Third Party Supplier.

We request the Australian Competition and Consumer Commission to consider this request for exclusive dealing.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nigel Rooney", written in a cursive style.

Nigel Rooney

### Form G

Commonwealth of Australia  
Trade Practices Act 1974 — Sub-section 93(1)

#### EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice Nigel John Rooney and Linda Ann Rooney  
 .....  
 (See Direction 2 on the back of this form)  
 (b) Short description of business carried on by that person Franchisor of a franchised system  
for the manufacture and replacement of refrigeration door seals  
 (c) Address in Australia for service of documents on that person  
PO Box 12029 GEORGE ST BRISBANE QLD 4003  
or 8 Arran Close EDGE HILL QLD 4870
  
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates  
Supply of goods for the manufacture of refrigeration door seals,  
these being (a) PVC extrusion and (b) flexible magnet  
 (b) Description of the conduct or proposed conduct  
requirement for franchisees to  
purchase supplies from nominated approved suppliers  
 (See Direction 4 on the back of this Form)
  
3. (a) Class or classes of persons to which the conduct relates Franchisees  
 .....  
 (b) Number of those persons—  
 (i) At present time 1  
 (ii) Estimated within the next year 1  
 (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses  
Please see Annexure "A"  
 .....
  
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice  
MR Nigel John Rooney  
PO Box 12029 GEORGE ST BRISBANE QLD 4003  
or 8 Arran Close EDGE HILL QLD 4870

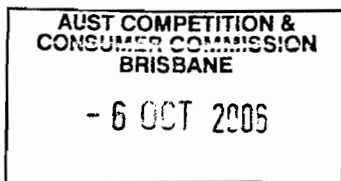
Dated 2nd October 2006

Signed by/on behalf of the applicant giving notice

Nigel John Rooney  
.....  
(Signature)

NIGEL JOHN ROONEY  
.....  
(Full Name)

Franchisor  
.....  
(Description)





### DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

### NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) (d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7a) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

ANNEXURE "A"

**EXCLUDED FROM  
PUBLIC REGISTER**



Commonwealth  
of Australia

# Certificate of registration of trade mark

Trade Marks Act 1995

No. 632127

I, ROSS WILSON, Registrar of Trade Marks, hereby certify -

that the trade mark represented on this certificate has been registered as a Trade Mark, No. 632127 in the Register of Trade Marks for a period of ten years commencing 14 June 1994 and that Mr Nigel John Rooney of 5 Mason Street THIRROUL NSW 2515 AUSTRALIA has been entered in the Register of Trade Marks as the owner of the trade mark.

The trade mark is registered for the following goods and/or services:

Plastic door seals for all types of refrigeration doors being goods in class 17

The preceding endorsement(s) were recorded prior to commencement of the Trade Marks Act 1995.

## THE SCHEDULE



Given under my hand and the seal of the  
Trade Marks Office on 16 April 1997

ROSS WILSON  
REGISTRAR OF TRADE MARK

**Trade Mark Details****Trade Mark : 632127**

**Word:** SEAL-A-FRIDGE HELP  
**Image:** CARTOON SEAL & OPEN FRIDGE WITH  
FACE ON DOOR  
**Lodgement Date:** 14-JUN-1994  
**Registered From:** 14-JUN-1994  
**Acceptance  
Advertised:** 26-OCT-1995  
**Registration  
Advertised:** 01-MAY-1997  
**Sealing Date:** 15-APR-1997  
**Renewal Due:** 14-JUN-2014  
**Class/es:** 17  
**Status:** Registered/Protected  
**Kind:** n/a  
**Type:** Composite



**Owner/s:** **Mr Nigel John Rooney**  
18 Bowd Pde  
WAVELL HEIGHTS,4012,QLD  
AUSTRALIA

**Address for Service: N J Rooney**  
PO Box 12029  
George Street  
BRISBANE  
4003,QLD  
AUSTRALIA

**Goods & Services**

**Class: 17** Plastic door seals for all types of refrigeration doors

**Endorsements:** Registration gives no right to the exclusive use of the words SEAL-A-FRIDGE and HELP.\* The preceding endorsement(s) were recorded prior to commencement of the Trade Marks Act 1995.\*

**Indexing Details - Word Constituents**

HELP

SEALAFRIDGE

**Indexing Details - Image Constituents**

ANIMAL

ARM

CARTOON

DOOR

EXPLOSION

FACE

ICE

OUTSTRETCHED

REFRIGERATOR

SEAL

SHELF+

WATER

ANNEXURE "C"

**EXCLUDED FROM  
PUBLIC REGISTER**