

**Australian Competition  
&  
Consumer Commission**

**CONFERENCE IN RELATION TO DRAFT NOTICES**

**Minutes**

**Notifications N50197, N50198, N50199 and N92676  
lodged by Seal-A-Fridge Pty Ltd, Nigel Rooney and Nigel and Linda Rooney**

**22 June 2007**

The information and submissions contained in this minute are not intended to be a verbatim record of the conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Conference in relation to Draft Notices:  
Notifications N50197, N50198, N50199 and N92676  
lodged by Seal-A-Fridge Pty Ltd, Nigel Rooney and Nigel and Linda Rooney**

22 June 2007  
Brisbane—ACCC office  
Level 3, 500 Queen Street  
Brisbane QLD 4000

By VCU: Sydney—Ultimate Office Solutions  
Level 4, 95 Pitt Street  
Sydney NSW 2000

By VCU: Melbourne—ACCC office  
Level 9, 313 Latrobe Street  
Melbourne VIC 3000

**Attendees:**

*Australian Competition and Consumer Commission*  
Brisbane

John Martin, Commission  
Scott Gregson, General Manager  
David Hatfield, Director  
Nadia Cooke, Project Officer

Sydney  
Maggie Abou-Rizk

Melbourne  
Louise Hird

*Interested Parties*

Brisbane  
Nigel Rooney, Director, Seal-A-Fridge Pty Ltd (Janice Bywaters, legal adviser)  
Jim Peterson, Seal-A-Fridge (Toowoomba)  
Grace and Jonathan Benjamin, Seal-A-Fridge (Brisbane North)  
Jason Slack-Smith, Seal-A-Fridge (Sunshine Coast)

Sydney  
Mary Siah, General Manager, Austwide Plastics Pty Ltd  
Frank Talarico, Seal-A-Fridge (Western Sydney)  
Terry Linke, Seal-A-Fridge (Sydney South)

Melbourne  
Don Radford, Seal-A-Fridge (North Eastern Melbourne)  
Ross and Deborah Layton, Seal-A-Fridge (Western Melbourne)  
Michael Walker, Seal-A-Fridge (Western Regional)  
Martin Gwilliam, Seal-A-Fridge (Northern Regional)  
Peter Malishev (South East Melbourne)

Conference commenced: 10.40 am

### *Introduction*

**Commissioner Martin** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the conference open and invited the party that called the conference, Nigel Rooney, on behalf of Seal-A-Fridge Pty Ltd, to make an opening statement.

### *Opening Statements*

**Nigel Rooney**, Director, Seal-A-Fridge Pty Ltd, provided a brief history of the franchise. He noted that Seal-A-Fridge Pty Ltd was incorporated in 1998.

Mr Rooney said that in the beginning, the franchise entered into franchise agreements for a period of ten years, with two options for additional 15 year periods. This meant franchise agreements could be for a total of 45 years. Mr Rooney said that the average length of franchise agreements is 5 to 8 years. He said that by entering into such a long agreement, he was seeking long term stability for the business.

Mr Rooney said that originally, there were three suppliers of PVC extrusion and magnet: RBM, K-Weld and Austwide.

He said that RBM and K-Weld supplied directly to manufacturers as well as to franchisees. Mr Rooney indicated Austwide generally provided commercial seals.

Mr Rooney submitted that when RBM took over K-Weld, there was a significant reduction in the quality of goods and prices increased by 15%. Mr Rooney noted the rise in oil prices around that time. A few months later, Austwide increased its prices by 6%. In response to these price increases and complaints by franchisees, Mr Rooney sought to source a quality product at a lower price...

Mr Rooney said that he had always been happy with the quality of RBM's products, and to a lesser extent with the quality of Austwide's products. He said however, that in 2005, there was a marked decrease in quality of the material supplied.

Mr Rooney indicated that all Seal-A-Fridge goods are subject to a registered trade mark, number 632127, and noted the terms of the trade mark.

Mr Rooney said that it was critical to maintain the value of the Seal-A-Fridge trade mark, and that he was therefore taking action to protect the trade mark.

**Commissioner Martin** asked Mr Rooney to describe what the drop in quality entailed.

**Mr Rooney** said that he had some samples which might assist and produced seal samples for the Brisbane participants to view. Mr Rooney said that with the increase in oil prices, the thickness of seals had been significantly reduced. Mr Rooney said that thinner material gives rise to higher rates of breakages.

By way of example, Mr Rooney said that you could see how the width of the magnet cell had been reduced. He noted that by reducing the thickness, manufacturers could produce more extrusion from a given amount of compound. Mr Rooney said that a thinner profile would do the job but wouldn't last.

Mr Rooney also noted that reducing the thickness of the magnet cell allowed you to use thinner magnet.

**Commissioner Martin** opened the conference for discussion and invited additional questions in relation to the issues raised.

**Mary Siah**, General Manager, Austwide Plastics Pty Ltd, asked what tests Mr Rooney has done to show that thickness has been reduced. She noted that breakages are not caused by thinness of the magnet wall but occur in the ridges between the magnet and the door.

Ms Siah said that Austwide's magnet sizes have not changed in 20 years. She also noted that differences in compound composition mean that thinner profiles may not fail more quickly.

**Commissioner Martin** invited Mr Rooney to respond and asked what were the responses of the suppliers when Mr Rooney raised issues of quality.

**Mr Rooney** said that said they had tested the product and had samples of the products over time. Mr Rooney produced two bundles of seal samples.

Mr Rooney acknowledged that Austwide hasn't changed the magnet. He said that RBM decreased the size and thickness of the profiles when it purchased K-Weld. Mr Rooney said that he approached other manufacturers, for example, Rehau. Rehau supply original equipment manufacturers, for example Email (who have since been bought out by Electrolux).

**Commissioner Martin** asked whether there was an Australian standard.

**Mr Rooney** noted that there is no standard for profiles, magnet or for seals as a whole.

Mr Rooney said that Electrolux etc. have standards that they issue to RBM (though not to his knowledge to Austwide).

Mr Rooney indicated that Seal-A-Fridge franchisees are in a unique position installing seals. He said that unlike original equipment manufacturers, they don't have the luxury of waiting one to two months while the seal embeds. He said that the manufacturers put the seal on and then the refrigerator goes into a box for one or two months before it is used. Mr Rooney said this is why franchisees needed a stronger magnet.

Mr Rooney said that he was happy with Austwide's 9.8 x 3.2 magnet.

Mr Rooney said that his standards mirrored Austwide's spec sheet.

**Ms Siah** noted that Mr Rooney had admitted in previous submission to using the specifications of Austwide. She queried why you would insist on a seal that lasts for 10-15 years where that may be longer than a new fridge lasts. Ms Siah also said that you don't have to wait for seals to be embedded. She said that commercial seals for example, go on straight away.

**Mr Jonathan Benjamin** asked why Mr Rooney hasn't approached local companies RBM and Austwide with respect to improving their product quality.

**Mr Rooney** said that they would not be in the business of seal replacement if original parts manufacturers used seals of high quality. He said that he had seen breakages in the seals of new refrigerators, sometimes within months. Mr Rooney said that the aim of the minimum standards is to protect the Seal-A-Fridge trade mark. He said Seal A Fridge has high brand recognition and that he wants to make sure that customers would recommend Seal-A-Fridge to their friends and family.

Mr Rooney said that if seals last three to five years, Austwide are benefited because they sell more product. He said that from the franchisors' perspective, you want longer lasting seals for increased customer satisfaction.

**Commissioner Martin** asked Mr Rooney about his response

**Mr Rooney** said that he admitted for a period of time he has not had a great working relationship with Austwide. Mr Rooney said this was because Austwide is in the area of manufacturing raw material, providing welding equipment, support and guide books in areas that Seal-A-Fridge franchisees are operating.

Mr Rooney said that given the level of stock that franchisees purchase from Austwide, he argues he would have expected more support from Austwide.

**Commissioner Martin** asked Mr Rooney to clarify this.

**Mr Rooney** said that he had received complaints from franchisees that Ms Siah was helping set up competitors to them and this was taking business away from them. He said this was causing conflict with franchisees because they were losing some of their market share.

Mr Rooney said that Austwide did assist in setting up Seal-A-Fridge. He said that part of the original arrangements was that he would purchase product from Austwide.

**Ms Siah** asked whether Mr Rooney had the technical background to be questioning Austwide's products. Ms Siah also said that three to five years after a seal has been replaced, there will be problems with a refrigerator other than the seal.

**Don Radford**, Seal-A-Fridge (North Eastern Melbourne), said that when he entered into discussions about the franchise, Mr Rooney talked about it as a service industry. He said that the franchise was sold not on the basis of selling a product but selling a service.

Mr Radford said that he thought the reduced thickness in material seemed to be in the seals used by original equipment manufacturers, and not franchisees.

Mr Radford said that seals didn't last because of stickiness from cordial or juice spillages on the door, and not because of problems with seal thickness.

Mr Radford indicated that he had purchased stock from RBM two years ago, just before the price increase.

He said that he had experienced no problems fitting one of the push-in seals that he used, which has one of the biggest cross section and a small magnet. Mr Radford said that fitting a seal doesn't have anything to do with the magnet.

**Deborah Layton**, Seal-A-Fridge (Western Melbourne), asked Mr Rooney to indicate the number of and provide the names of those franchisees who had approached him regarding the price increase.

Ms Layton also asked how Mr Rooney's submission that Seal-A-Fridge had 10 per cent market share fits with his indication that the franchise had high brand recognition. She said that many franchisees estimated they had a market share of around 40 per cent.

Ms Layton also noted, that as a person taking the calls from customers, most jobs are on refrigerators over 10 years old.

**Commissioner Martin** provided the Sydney based franchisees with an opportunity to comment in relation to quality.

**Terry Linke**, Seal-A-Fridge (Sydney South), said he thought the others had covered off on the issues.

**Jim Peterson**, Seal-A-Fridge (Toowoomba), indicated that he had bought his franchise in 1999, so had been fitting seals for eight years.

Mr Peterson said that a cell wall would collapse perhaps once a year. He said that it was the gusset in behind the magnet which would break, for example if a fingernail was put through the seal. Mr Peterson said that the life of seal also depends the number of people in the family. He said the more people there are, the more opening and shutting of the door there is, the greater the likelihood of someone putting a fingernail in the seals and the greater chance of spillages. He said that sugar from spills grabs and seals and causes breakages.

**Scott Gregson**, General Manager, Adjudication Branch of the ACCC, asked whether Mr Peterson had noticed any changes in seal quality over the years, for example through increases in call-outs.

**Mr Peterson** said that he had not noticed any changes in quality.

Mr Peterson noted that he has used the magnet supplied by Mr Rooney. He said that the magnet was supplied in tight rolls, which resulted in it curling up at the ends. Mr Peterson said this meant the magnet wasn't flat enough to put in the profile. Mr Peterson said that if once the seal is manufactured, it isn't flat, you have to make a new one.

**Mr Gregson** asked what happened if a seal needed replacing.

**Mr Peterson** said that Seal-A-Fridge offer a 12 month warranty and franchisees would replace a faulty seal at their own cost.

**Grace Benjamin**, Seal-A-Fridge (Brisbane North), said that she has been taking calls from customers for three years. Ms Benjamin said that they have used products from Austwide, some product from RBM and products of Mr Rooney for one summer. She said that there was no change in the number of call outs.

Ms Benjamin said that recently, they had a call out for split seals on a refrigerator-freezer unit. She said that the splits were on the top of the refrigerator and on top of the

freezer. Ms Benjamin said that usually spillages would be the cause of a split on the top of the refrigerator door. She said that however that it was very unusual for the seal to split on top of the freezer door. She said that they had installed the seal 10 months ago and that the product used was bought from Mr Rooney.

Ms Benjamin asked Mr Rooney when the last time he had bought from anyone other than Patrick Products. She noted that many franchisees were concerned with this because King Seals had now registered in five states.

**Commissioner Martin** asked whether there were any other quality issues that franchisees wished to raise.

**Jason Slack-Smith**, Seal-A-Fridge (Sunshine Coast), said that he had bought his franchise in 2000. He said that he takes calls and fits seals. Mr Slack-Smith said that he had instigated some of the questions to Mr Rooney as to quality and price.

In general, Mr Slack-Smith said that he had noticed decreasing quality in refrigeration seals. He said that he was on the point of selling his business before there was a decline in the quality of refrigeration seals on new appliances, which meant more work for him.

Mr Slack-Smith said that in Queensland, mildew in the ribs of seals causes them to harden and spilt more quickly. He said that mould resistance is therefore an important quality.

Mr Slack-Smith said that when RBM took over K-Weld, there was a lag in the supply of stock. He said that stock had begun arriving dusty and mouldy. He also said that pricing began to get out of control.

Mr Slack-Smith suggested that he had built a niche market on the Sunshine Coast. He said he had around 50 to 60 per cent of the replacement market.

**Commissioner Martin** asked Mr Slack-Smith whether he was exclusively using product from Seal-A-Fridge Pty Ltd.

**Mr Slack-Smith** said that he was.

**Mr Gregson** asked whether Mr Slack-Smith considered Seal-A-Fridge's product to be of a higher quality.

Mr Slack-Smith said that he hadn't used Austwide for a number of years because of a disagreement they had many years ago.

Mr Slack-Smith said that he had thought Seal-A-Fridge should have a uniform, quality product and had contacted Rehau to try and deal with them directly but the quantity they required him to buy was too large. Mr Slack-Smith said that he passed his ideas onto people who might be able to attain such large quantities on behalf of the entire franchise.

Mr Slack-Smith said that was important to know where the product was coming from and that supply would be maintained.

**Mr Gregson** asked whether he had experienced any problems with supply.

**Mr Slack-Smith** said that he doesn't carry the full range.

He said that he would be concerned if goods were coming from overseas as you would have to order a little bit more in advance to ensure you had sufficient stock.

Mr Slack-Smith said that if you are not in a position to supply, you can lose work very quickly to competitors.

**Commissioner Martin** provided Mr Rooney with an opportunity to respond to the many issues which had been raised.

**Mr Rooney** said that as noted, Jason Slack-Smith was one of the franchisees who had raised concerns about the price and quality of the goods of existing suppliers.

He said that high brand recognition does not equate to a certain percentage of market share.

Mr Rooney also referred to a 2005 letter from RBM which refers to its lost sales as a result of quality issues.

**Commissioner Martin** asked Mr Rooney what he thought Seal-A-Fridge's market share was.

**Mr Rooney** said that he thought they had about 10 per cent, in light of original equipment manufacturers, electrical repairmen, and home handy men etc.

**Commissioner Martin** asked about the market he was in—the service not the product.

**Mr Rooney** said that Seal-A-Fridge offers far more than a service. He said that 90 per cent of what they do is seal replacement.

**Mr Benjamin** said that by specialising in seal replacement, Seal-A-Fridge has developed a niche market. He said that refrigeration mechanics aren't interested in seal replacement.

**Mr Gregson** asked what proportion of the mobile seal replacement market Seal-A-Fridge had.

**Mr Rooney** said that this was not a sustainable market definition, but if you defined this as providers with equipment in the back of the van, they would have about 90 per cent of the service market.

Overall, however, Mr Rooney said that of the businesses who make seals for a living (that is, including those who manufacture seals and/or take made-up seals to customers), they would have under 30 per cent.

Mr Rooney said that other than the two Brisbane metropolitan franchises, others have at least six other business who replace seals on a full-time basis.

**Commissioner Martin** asked whether Ms Siah had any comment on the market share of Seal-A-Fridge.

**Ms Siah** said that she had provided the ACCC with graphs showing Seal-A-Fridge has 43 per cent of the replacement market.

Ms Siah noted that commercial seals need to be replaced every six to eight months because of spillages. She said that some cabinets need to have the seals replaced after two months. Ms Siah emphasised that increasing the thickness of profiles does not necessarily increase the life of the seal. She said that what is in the compound matters.

**Commissioner Martin** invited Mr Rooney to comment on the role of Patrick Products and King Seals.

**Mr Rooney** said that Patrick Products was owned by Sean Stenson. He said that when he was out trying to find a new supplier, he contacted Mr Stenson who had experience in purchasing and in PVC extrusion.

Mr Rooney said that King Seals is a business owned by Kathleen Muller.

Mr Rooney said that to try and thwart Patrick Products from coming in to Queensland, his wife had registered the name Patrick Products in that State. He said that they had deregistered the name for over six months now.

Mr Rooney noted that he had a falling out with Patrick Products.

Mr Rooney said that he does not want to force only products from Patrick Products. He said that franchisees could use products from RBM and Austwide so long as they meet the minimum quality standards. He said that he would also be happy to give written notice to franchisees regarding the use of alternative suppliers. He said he believes suppliers would quite easily meet the standards.

Mr Rooney said that RBM does not provide an entire range. He also said neither does Austwide.

Mr Rooney said that Patrick Products would not be the only nominated approved supplier.

**Commissioner Martin** asked whether Mr Rooney would be nominating a range of suppliers.

**Mr Rooney** confirmed he would.

**Frank Talarico**, Seal-A-Fridge (Western Sydney), asked who tests the standards and where is the quality control.

**Mr Rooney** said there is ISO certification. He said that goods are inspected at the manufacturers and quality checks are made here.

Mr Rooney said that he had provided a list of pre-determined profiles, different ones from different suppliers.

**Commissioner Martin** asked why Mr Rooney didn't allow franchisees to choose their suppliers.

**Mr Rooney** said that he had tried that scenario. He said that unfortunately, even after he had implemented the minimum quality standards, franchisees weren't adhering to these.

**Commissioner Martin** asked what the basis was for Mr Rooney's minimum quality standards.

**Mr Rooney** said that a lot of the standards are solely based on the standards of Austwide.

Mr Rooney noted that Austwide purchased its compound from Polvin Products. He said that he has contacted them and they would be happy to provide him with the same compound to manufacture extrusion.

**Mr Gregson** asked what the response of suppliers had been to being asked to be nominated approved suppliers.

**Mr Rooney** said that they hadn't got to that stage yet. He said that he has not enforced the third line or full line force because he has been waiting for the ACCC's assessment. Mr Rooney said that he was sure they could come up with some business format.

Mr Rooney noted that they could, as other suppliers do, drop ship directly from the manufacturer.

Mr Rooney said that one of the big issues is the special prices that Brisbane North and the Victorian franchisees get from Austwide. He said that they can get profile for \$0.96 a metre.

**Ms Benjamin** asked why Seal-A-Fridge had offered product that was only 1 cent cheaper than Austwide's and submitted that Mr Rooney had not delivered on anything that had been promised.

**Mr Rooney** submitted that he could get a lower price if he can buy in bulk. Mr Rooney said that Austwide and RBM do not want the notifications in place because it would stop them offering individual pricing to franchisees.

**Mr Radford** said he had measured the wall thickness of one of Seal-A-Fridge's profiles and was under its own standards. He said that he did buy product from Mr Rooney in May last year. Mr Radford said that the real concern was that there is no transparency.

**Ms Siah** said that Austwide supplies nearly 70 different profiles. Ms Siah compared this to the 10 profiles supplied by Seal-A-Fridge.

Ms Siah said that there are differences in prices charged to franchisees because of freight. She said that there was a standard price offered to franchisees of \$0.90 plus freight.

**Mr Rooney** asked Ms Siah whether the price of \$0.90 was available to all franchisees.

**Ms Siah** confirmed it was.

**Commissioner Martin** asked about the suppliers Mr Rooney currently has.

**Mr Rooney** said that he imports magnet and PVC from a manufacturer at this stage and that while he is happy to provide the ACCC with this information does not wish to make this public at this stage.

Mr Rooney said that he is happy to buy from any person.

He said that he is looking at setting up his own production plant, which would allow him to provide stock far cheaper than current suppliers.

**Ms Benjamin** said that there are only a couple of profiles that they don't purchase from Austwide (for example, silicon seals for cool room doors). Ms Benjamin said that they had been negotiating on behalf of franchisees a national price list for franchisees, which would have freight added on.

**Mr Gregson** asked Mr Rooney to advise of any links with Patrick Products or King Seals. Mr Gregson said it seemed Patrick Products and Seal-A-Fridge shared premises and asked Mr Rooney to comment on this.

**Mr Rooney** said that Patrick Products have been paying for storage in his warehouse. He said that this was part of the agreement they reached when he was negotiating Patrick Products' entry into the market.

Mr Rooney said that he had no links with King Seals, save for the fact that there were ongoing issues with franchisees regarding the King Seals trade mark.

Mr Rooney said that he had received only one detailed response to requests for further information regarding the issue.

**Commissioner Martin** then called for any further comments.

He noted that the ACCC was providing a further opportunity for parties to make written submissions in respect of the Draft Notices and would appreciate these comments by **6 July 2007**. Commissioner Martin also noted that the ACCC would be providing participants with a record of the conference, which would also be placed on the ACCC's public register.

Commissioner Martin closed the conference by thanking parties for their cooperation and conduct during the conference.

Conference closed: 12.50 pm