

Seal-A-Fridge (NE Melb)

ABN 16 232 517 433



SEAL-A-FRIDGE

13 14 79

Manufacturers & Suppliers of Refrigeration Seals

PO Box 1548 East Doncaster, Vic. 3109

Ph: 13 14 79 or (03) 9841 4099

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4 July 2007

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Sir/Madam

Confidentiality Claim

I request confidentiality for part of Appendix A in the attached submission relating to Exclusive dealing notification N50196.

The claim is for the omission of the quantities of materials I have used in the past twelve months. I believe the quantities are commercially sensitive and do not wish to have them placed on the ACCC Public Register.

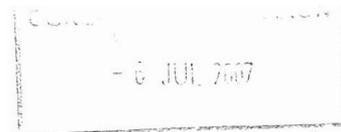
A full copy of both the confidential and non-confidential documents is enclosed.

Many thanks,

Yours faithfully,

A handwritten signature in black ink that reads "Don Radford". The signature is fluid and cursive.

Don Radford



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Dear Sir/Madam

**Exclusive dealing notification N50196
- further information**

Many thanks for the opportunity to submit further information regarding the above.

SAF (North Eastern Melbourne) market

- 1 **The geographic area serviced** is North Eastern Melbourne covering approximately one third of the residential addresses in the Melbourne metropolitan area.
- 2 **Major competitors:**
 - Refrigeration mechanics
 - Seals R Us
 - Original Equipment Manufacturers (OEMs)
 - Seal All Fridges

No substantive competition to SAF franchisees comes from appliance repairers (as distinct from refrigeration mechanics), electricians, home handypersons, and do-it-yourself installations. Also the SAF concept is not directed towards the wholesale market. I do a small amount of wholesale work which totals less than 3% of turnover. Thus the wholesale market has very little relevance to the SAF market place.
- 3 There are **no area restrictions for competitors**. They all undertake work or sell goods across an extensive part of metropolitan Melbourne
- 4 **Seal-A-Fridge offers a mobile seal replacement service** including manufacturing seals on-site thus completing the work with only one visit, often on day of order and usually within 2-3 days. Price for the bottom door of a single door fridge is usually \$110.00-\$120.00 inclusive of GST for my franchise. In comparison:

- **Refrigeration mechanics** require make and model number as they need to order required seals thus increasing supply time. Prices are usually \$160.00 or more for one seal which makes them more expensive than SAF
- **Seals R Us** offers refrigeration and air condition mechanical services in addition to its seal replacement services. Seals are made at the owner's premises rather than on-site, necessitating either two visits or customers supplying make and model number. Prices are generally around 10% below SAF prices although service is slower and they do very little domestic work
- **OEMs** have their own trades-people or sell through retail outlets to other trades people or home handy men. Prices usually include callout fee, seal and labour charges and are usually the most expensive. I was recently informed by one of the main retail outlets dealing in OEMs product parts in my area that of the seals they sell only about one in eight was sold to a business for commercial fitting, the rest being sold to home handymen. From my view on a number of visits of this particular store it would seem they would sell no more than 2-3 seals per day.
- **Seal All Fridges** is a one person operation and has a similar mobile format as SAF but has limited advertising and does not seek full-time work. Prices are generally 10% below SAF prices.

5 **Regarding proportion of refrigeration seals replaced**, my estimates relate to the domestic and commercial on-site supply and fitting of seals. The franchisor has said that SAF does not have any impact in the wholesale supply market (Submissions reply, 14 March 2007) and I agree with that point, adding that the wholesale supply market is not a relevant market for SAF and that SAF franchisees were never given any expectation they would have any part of the wholesale market. The franchisor had also previously submitted that SAF has only 10% of the market which he clarified on 22 June 2007 at the ACCC pre-decision conference regarding his third line forcing applications (22 June pre-decision Conference) as being the total seal replacement market in Australia. In response to a question he suggested SAF has 80-90% of the mobile seal replacement market. I do not consider selling into the wholesale market or supply-only to customers to be relevant as they form approximately 2-3% and less than 1% respectively of my business turnover. I estimate my business has approximately 50-60% of the relevant market being on-site supply and fitting of refrigeration door seals.

- 6 **Competitor's proportion of market** is estimated at
- Refrigeration mechanics – 10-20%
 - Seals R Us – 10%
 - OEMs – 5-10%
 - Seal All Fridges – 5%

SAF (North Eastern Melbourne) customers

7 **Major customers** are collectively households and a range of commercial customers. Householders, usually, are one-off customers. I do not have any customers who, singly, would account for more than 1% of turnover on a yearly basis.

- 8 **Proportion of business** is approximately 75% domestic and 25% commercial clients

SAF (North Eastern Melbourne) stock

- 9 **Profiles used and approximate amounts** per year are attached as Appendix A.
- 10 **Ready-made seals**, that is, seals I purchase from other suppliers is under 10 per year and typically about 3-4 per year. Seals I supply for others to fit amount to between 2%-3% of annual turnover.
- 11 **Frequency of ordering materials** is approximately every two months or 6 times per year
- 12 **More specialized products are usually ordered** at the same time, that is, about 6 times per year. Additionally I may place up to 6 further orders for specialized materials including the made-up seals I use.

SAF (North Eastern Melbourne) experience with products from Seal-A-Fridge Pty Ltd

- 13 **Purchases from Seal-A-Fridge Pty Ltd** has included two orders. The first in May 2006 for 1 crate (approx 300 metres) each of S146, S188, and SF&P along with 700 metres of magnet. A further crate of SF&P was purchased in about August 2006
- 14 **Regarding quality of product**, SAF product has a different 'feel' and appears to be covered by a wax like substance. I have found the weld strength to be much lower on SAF profiles compared to Austwide and RBM products. In fitting I found the SF&P profile to be good. The SAF S146 is different and generally satisfactory but the creamier colour is noticeable and weld strength is a concern. With the SAF S188 I have had a number of difficulties. A number of lengths have been most difficult to insert the magnet and I have given up on quite a number of seals I started to make due to this factor. Secondly I have experienced trouble fitting seals made from SAF S188, having to replace some seals. One particular seal I was unable to achieve a satisfactory due to the seal not conforming to the cool room surface, but had no trouble when replaced with a seal made from Austwide profile. Thirdly, all of the twenty lengths of S188 I have remaining do not meet the franchisor's 'minimum quality standards' specifically where the wall thickness of the profile measured between 0.42 mm and 0.47 mm. The SAF magnet, contrary to SAF minimum standards, breaks when folded in half.

Where is the quality problem? Apart from noting aspects of Austwide and RBM products that do not meet SAF minimum quality standards and neglecting to address where SAF product does not meet SAF minimum quality standards, the franchisor's reference to poor quality including PVC extrusion wall thickness of under 3 mm appears to be directed mostly at OEM products. If so, this is strange as on one hand the franchisor lambasts the quality of OEM seals but then says if they made good quality seals SAF would not have a business (22 June pre-decision Conference, p 4). As I and others have previously explained, the need for seal replacement is almost always due to external factors. The requirement for the thickness of the PVC extrusion to be above 0.5 mm is not of paramount

importance. While I have cited SAF S188 as being under size, contrary to the franchisor's minimum quality standards, my criticisms of using the material are directed at the less than adequate size of the magnet channel and the characteristics of the material rather than the wall thickness of the extrusion. The franchisor has not addressed the issues of his product not meeting SAF minimum quality standards or the difficulties of use.

Franchisor may use 'consistent' instead of 'minimum quality standards'. In the franchisor's submission of 14 March 2007 (p 1) he states '*SAF would purchase goods in bulk from any business or company's (sic) that will provide supplies at a consistent standard that meets our requirements and at an agreed price.*' The words *consistent standard* and *requirements* are used instead of *minimum quality standards*. My experience with the franchisor suggests if the notifications were not revoked 'requirements' would most likely become the operative word and the SAF minimum quality standards as currently presented would not be used.

- 5 **Timeliness of supply** – Delivery of goods from SAF was approximately one week compared to usually within 4 working days from RBM and 2-3 working days from Austwide. Experience from two deliveries is not sufficient to gauge the level of service expected from SAF particularly as the time I ordered from SAF I knew they had the stock lines I ordered and the franchisor was very keen to make the sale. However, there are other indicators relevant to timeliness that need presenting:

'Should' raises concerns – In the franchisor's submission of 11 December 2006 (Annexe A, Pt 12) he states, where franchisees seek approval for items not held by the franchisor, that '*Approval should take no longer than 7 days.*' The word 'should' has no enforceable basis as no doubt the franchisor is well aware. There would be no obligation on the franchisor expediting requests.

SAF franchisees tend to undertake a greater range of the difficult and unusual seal replacements compared to other suppliers and thus need the variety of profiles presently readily available. In the franchisor's submission to the ACCC of 11 December 2006, Annexure A Document 4 he includes correspondence from 2005 which includes – '*We anticipate being able to supply a full range of profiles and magnet by October 2005.*' Nineteen months later a price list from SAF lists only ten profiles. Unfortunately such a discrepancy between promise and action is not unexpected from the franchisor.

Expected acquisition from overseas of PVC extrusion raises the very real possibility of the franchisor running out of stock lines from time to time with flow-on effects for franchisees. There is no confidence that in such a situation the franchisor would expedite franchisee use of alternative materials.

Other experiences with service from franchisor – I emailed the franchisor on 17 June 2007 in response to him inviting contact if I had any issues to discuss. Among other things I alerted him to difficulties I had experienced using SAF S188 (a standard commercial profile) including difficulty inserting magnet in the profile, difficulty fitting some of the finished seals, low weld strength, and wall thickness less than the SAF minimum standards. Secondly, in the same email and an earlier email on 4 April 2007 I requested advice on arrangements to van sign writing that needs rectification. Other matters were also raised in the email and

previous correspondence. The only item addressed concerned overcharging of fees which took the franchisor in excess of four months to send an account for the correct amount. A copy of the email is attached as Appendix B.

The franchisor has a poor record of dealing with franchisee concerns and could not be expected to offer timeliness and adequate service in the supply of PVC extrusion and magnet.

Impact of purchasing products from Seal-A-Fridge Pty Ltd

- a. **ACCC evaluation:** I agree with the assessment made by the ACCC in the draft notices Points 9.30 – 9.37 that stock prices are likely to rise if third line applications were not revoked. The reasons given are equally valid for N50196. Further, the franchisor has given no commitment to maintaining any ongoing price reductions compared to alternative suppliers.

The franchisor has indicated a saving from published supplier prices of between 5-15% in one submission and 15% in further information provided to the ACCC. He claims franchisees are not able to negotiate favorable prices yet then, paradoxically, complains that some franchisees have ‘secret’ deals with suppliers for PVC extrusion at cheaper prices. At this time I am able to achieve savings compared to the franchisor’s prices – as evident from submissions from the franchisor and Mary Siah at the 22 June pre-decision Conference. Further I save with freight costs. Typically when receiving a delivery I would have to stay at home for at least half a day to help with unloading. Picking up my own supplies takes less of my time and occurs when suitable for me. Additionally I receive a refund for returned empty crates which covers vehicle costs. Therefore the saving on delivery charges is at least the full amount of any delivery charge.

Franchisor history of raising charges: Of great concern is that from previous experience I would expect prices to rise if franchisees were forced to purchase from the franchisor. The franchisor has an established history of raising fees, both with the weekly fees franchisees pay and the amount payable when a business is transferred. The franchisor’s position when I bought my business was that that he *‘had made his money (from the high up-front fee) and now we could make ours. All he wanted was for the priority 13 number costs and administration to cost him nothing.’* Subsequent rises have outstripped inflation and not offered any transparency or any notable service from the franchisor.

Market effect: If SAF franchisees are forced to purchase from the franchisor I expect an effect in the market of PVC extrusion and magnet. It is unlikely either Austwide or RBM would have a suitable commercial arrangement with the franchisor, noting the franchisor says he has strained relationships with both companies. Without the SAF market, the total volumes of both Austwide and RBM would be reduced, they would have less competition in a fragmented market with no major national group, raise their prices and the SAF franchisor would follow suit.

Higher costs equals higher customer prices: At this time I pay a higher price for special profiles such as for Fisher & Paykel and Sharp refrigerators and charge a higher price than for, say, Kelvinator and Westinghouse refrigerators. Expected cost increases of SAF product would require increasing prices to customers.

The unsatisfactory standard of some of the materials supplied by the franchisor has added to costs, particularly in time taken to complete work, but also in wasted materials notably with the commercial material purchased from SAF. As a result I would expect to either lose commercial work or spend much more time completing jobs, reducing my efficiency and thus competitiveness against other suppliers.

- 16 **The effect of requirement to purchase from SAF** would result in lost work as SAF prices increased and supply became uncertain affecting franchisee competitiveness. Additionally:

Commercial customers would move to alternative suppliers if SAF materials proved unsatisfactory. One commercial customer has already rejected SAF S188 as unsatisfactory because of the weaker strength of the weld joints and another recently rejected a cool room seal made from SAF S188 because of poor fitting. Additionally I have voluntarily changed SAF product because of unsatisfactory fit and weld strength. In the past year I have used approximately 200 metres of SAF S188 and had numerous problems, yet during the same period have used considerably more of the equivalent Auswide D144 and RBM 188 profiles with no problems. I would therefore expect to both lose customers and spend considerable extra time trying to achieve suitable results as evident by the problems I have experienced with SAF 188.

Domestic customers would be lost where a sufficient range of profiles were not available from the franchisor. The difficulty of gaining approval and supply may outweigh the commercial return. I would then become one of the 'pack' and not do many of the less mainstream seals, again affecting my competitive edge.

- a. A combination of direct cost increases of the materials and freight plus indirect costs such as limited stock, delays in approval, difficulty using some SAF product and dealing with an inconsistent franchisor are likely to at least double the costs of PVC extrusion and flexible magnet.
 - b. I would expect an increase in prices charged to customers in the order of 20% to achieve current profitability, which would then likely be counterproductive due to the work lost.
 - c. Competitors would likely face some increase in stock prices but they would not have the other limitations that franchisees can expect.
 - d. Timeliness of responses, say, for approval to purchase items not kept by the franchisor would be of considerable concern. Examples of experience with poor and non-existent responses from the franchisor have already been given in Point 15 and Appendix B
 - e. Competitor service is unlikely to change significantly. The biggest losers would be customers due to expected reduction in range and efficiency currently offered by SAF franchisees
- 17 **Customers moving to alternative suppliers** are covered in the second and third paragraph under point 16. It must be pointed out that loss of work in one area invariably leads also to losses in other areas through lack of referrals and repeat business.

18 **Lost business would go** to any of the competitors listed in Point 2. Of particular concern is that the more difficult jobs that would not be done by others, necessitating either putting up with sub-standard seals or purchasing a new refrigerator – both with a significant cost effect on consumers.

At the time of writing I have a job in progress where the commercial customer had previously contacted four alternative suppliers of seals, all of whom said they were unable to do the job because they did not have/ could not get the seals. This type of job would be much more difficult to keep with delays in getting the necessary profiles.

Summary

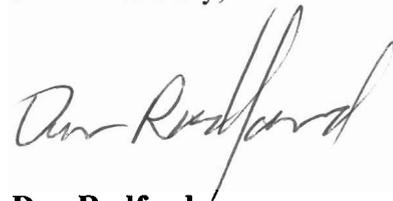
I believe the above demonstrates that SAF holds a significant section of the relevant market of on-site retail supply and fitting of refrigerator seals as compared to the franchisor's position of 10% of the total refrigerator seal replacement market. The increased prices likely across the franchise group and specifically with my business would be expected to be a significant impact in the relevant market to the detriment of SAF franchisees and customers. Demonstrated failure of the franchisor to address quality issues of SAF product and respond to a range of franchisee concerns would adversely affect franchisees if N50196 were not revoked. Of major concern are expected price increases of SAF product, material wastage where quality is compromised and wasted time using SAF materials.

I believe that the ACCC allowing N50196 to continue would have the purpose, effect or likely effect of substantially lessening competition and that in all circumstances:

- (a) the conduct is not likely to result in a benefit to the public; or
- (b) any benefit to the public that is likely to result from the conduct would not outweigh the detriment to the public constituted by any lessening of competition likely to result from the conduct

Therefore I ask that the ACCC revoke Notification N51096 so that there is not a substantial lessening of competition in the relevant market.

Yours faithfully,



Don Radford

APPENDIX A

Seal-A-Fridge (North Eastern Melbourne)

PVC extrusion held and approximate use during 2006-2007 financial year

Austwide C1

Austwide C2

Austwide C4

Austwide D144 (=KW188, S188)

RBM 188 (=D144 S188)

S188 (= Austwide D144, RBM KW188)

Austwide D1 18

Austwide D4 Low (3 colours)

Austwide D4 Medium (5 colours) (=S146)

SAF S146 (=Austwide D4)

Austwide D5

Austwide D7

Austwide D8

Austwide D9

Austwide W7

Austwide F&P2 (=SF&P2)

SAF F&P2 (=Austwide F&P2)

Austwide PL6

Austwide Sharp

RBM KW142

RBM KW193



EXCLUDED FROM
PUBLIC REGISTER

APPENDIX B

Seal-A-Fridge (North Eastern Melbourne)

Via email

17 June 2007 at 4.29 pm

Dear Nigel,

Thank you for your phone call on 15 June 2007. My understanding of the points covered is as follows:

1. You advised about the ACCC meeting on 22 June 2007 and said I was welcome to attend
2. Anonymous emails had been circulated. You said these had been sent by Grace Benjamin and you were suing for defamation but it was nothing for me to be concerned about
3. You asked the percentage of my takings as cash payments as a result of joint ACCC ATO request and asked if I knew the breakdown. I replied that I did not. In response to further questions I suggested approximately one third each cash, cheque and credit card. You suggested that was very low and more likely around 60% cash
4. You advised the account for weekly fees was now sorted out and charged at the correct amount. I noted adjustments had not been made for the overpaid amount but had deducted that from amount owing for May 2007 account
5. You asked if there were any other items that I might wish to discuss. I responded that you were not quick in answering correspondence and you said he did the best you could. You invited me to contact you if there was anything I wished to discuss.

If the above is not in any way a correct summary of our discussion please advise me.

In response to point 5 above, I list the following points that remain unresolved from previous discussion and correspondence:

- a) **Weekly Fees.** During discussion in 2005 about a Deed of Variation to my franchise agreement you acknowledged my concern about possible increases in the weekly fee for a purchaser of SAF (NE Melb) and offered an arrangement you said would take care of the concerns I expressed. Subsequently you have indicated your intention to charge a greater weekly fee, achievable by charging a 'different' fee. I agree that by you 'complying with the franchise agreement' you are able to charge at whatever rate your 'current franchise agreement' contains. However we were both very clear about the intent of the Deed of Variation and I request arrangements that will reflect the agreed amount in the Deed of Variation. This matter was included in a letter to you dated 15 January 2007 for which no response has been received.
- b) **Television advertising.** This matter was also raised in the 15 January letter and no response has been received by me. It seems astounding that you allow changes to one franchise agreement that has a direct impact on other franchises and then leave the affected franchisees to find out the consequences from the new franchisee! Your explanations to the Malichev's on this matter have been totally unsatisfactory and I request your attention to restore the integrity of the franchise agreements and the advertising payment system you put in place.

- c) **sealafridge.com.au.** This is another matter raised in my letter of 15 January 2007 for which no direct response has been received. I note you did send a letter on this matter, presumably to all franchisee. I advise that I am more than happy for discussion about how the site can be used for the benefit for all franchisees. I do advise though that I am not willing to relinquish ownership of the site at this time.
- d) **Van sign writing.** I sent an Email to you on 4 April 2007 regarding the need to rectify some of the sign writing on my van. Again, I have received no response. Your advice on the arrangements and payment for this work would be appreciated. Also, I inquire about arrangements for the sign writing and van fit-out at the time I purchase a new van.

I would also like to record some comments regarding stock purchases. Last year I purchased quantities of FP2, white S146 and black S188. On all the stock items I have experienced weld strength considerable less than for Austwide and RBM stock lines. I note you have claimed there is no reduction in weld strength, however I continue find a significant discrepancy regardless of weld temperature. I have had additional and further troubles with the S188 stock and am reluctant to use it now. My concerns include:

- Difficulty or unable to insert magnet on some lengths even with the use of talcum powder or silicon spray
- Difficulty with fitting on some jobs, to the extent I have had to replace the seal with alternative stock
- I recently purchased a digital vernier caliper and note with the 20 remaining lengths of S188 I have the wall thickness varies from 0.42 mm to 0.47 mm which is below your published minimum requirement.

I would be interested for your comments and action on the above

Thank you for your offer for me to raise points of discussion. It would have been preferable to have earlier discussion and resolution rather than within one week of the ACCC conference on 22 June 2007.

Yours faithfully,

Don Radford