



Rodan + Fields Summary

Introduction and Business Model

1. Rodan + Fields, LLC (**R+F**) is a direct selling company based in the United States which offers dermatology-based skincare products created by dermatologists Dr Katie Rodan and Dr Kathy Fields. R+F was founded in 2002 and currently conducts business in the United States and Canada.
2. R+F is a member of the US Direct Selling Association.
3. R+F will commence business in Australia in 2017. The business operation will be conducted through Rodan & Fields Australia Pty Ltd.
4. R+F was initially launched as a department store brand in 2002. Today, R+F is a social commerce brand, which operates through Independent Consultants who have the opportunity to run their own business and build a personal sales teams.
5. Our compensation plan provides for commissions on sales made by Independent Consultants and their personal teams, as well as performance bonuses for reaching milestone achievements.
6. R+F welcomes the opportunity to lodge a submission in response to the *Australian Consumer Law Review Issues Paper* (March 2016).
7. Our submission will focus on the unsolicited consumer agreement provisions contained in the Australian Consumer Law.

Unsolicited Consumer Agreements

8. R+F operates under a direct selling business model. As a result, negotiations may be commenced by an Independent Consultant away from any business or trade premises owned or operated by R+F. In these circumstances, any agreement for the purchase of products or regimens will be classified as an “unsolicited consumer agreement” (“UCA”) and must comply with the requirements for UCAs set out in the *Australian Consumer Law* (“ACL”).
9. Accordingly, R+F wishes to comment on the UCA provisions contained in the ACL because the provisions will likely apply to some of the circumstances in which Consultants may make sales to customers.
10. In summary, R+F considers that the UCA restrictions referred to in this submission will likely operate as a disproportionate and unjustified restriction on the operation of R+F’s Australian business, particularly by reference to other retailers in the Australian market.

Prohibition on Supply and Accepting Payment during the Cooling-Off Period

11. The UCA provisions prohibit any supply of products where the sale exceeds \$500 and accepting payment during the 10 business day cooling-off period pursuant to section 86 of the ACL.
12. If a sale agreement is a UCA (for example, resulting from the circumstances outlined above), then the following applies (among other matters) during the cooling-off period:
 - (a) Products may be supplied if the value of the sale is less than \$500.
 - (b) Payment cannot be accepted or demanded.

13. R+F considers these restrictions during the cooling-off period on the supply of products exceeding \$500 and on accepting or demanding payment are unjust and disproportionate to the object of consumer protection under the ACL.
14. We believe that the consumer protection provided by section 84 of the ACL renders the prohibition on accepting payment during the cooling-off period redundant.
15. Specifically, section 84 of the ACL would require R+F to immediately refund any payment made by the consumer under the UCA if the consumer terminates the UCA during the cooling-off period. Failure to comply with the requirement to immediately refund or return consideration paid is a strict liability offence under section 178, which includes a pecuniary penalty of \$50,000 (for a company).
16. As there is a refund requirement and an offence provision for a failure to refund, R+F considers that the section 86 prohibition on accepting payment during the cooling-off period is unnecessary, draconian and goes beyond what is required to protect consumers' interests.
17. Further, R+F has a Customer Satisfaction Guarantee. If for any reason a customer or Independent Consultant is not satisfied with an R+F product, the unused portion may be returned within 60 days of the order being placed for a 100% refund (less shipping and handling costs). This Customer Satisfaction Guarantee provides a consumer with rights which well exceed those available under the UCA provisions and are in addition to those provided under the statutory consumer guarantees regime provided in the ACL.
18. When compared to the regulation of UCA's in other jurisdictions, R+F considers the UCA supply and payment prohibitions to be unnecessary and anti-competitive to the extent that it imposes an unfair disadvantage on direct selling companies as compared to traditional retailers.
19. For example, we understand that neither the New Zealand *Fair Trading Act 1986 (FTA)* nor the EU Directive on Consumer Rights adopt the policy underlying the ACL UCA provisions insofar as they both allow suppliers to accept payment during the cooling-off period.
20. R+F submits that section 86 should be amended such that:
 - (a) the prohibition on the supply of products exceeding \$500 during the cooling-off period is increased to \$1000; and
 - (b) the prohibition on accepting or requiring payment during the cooling-off period is repealed.

Supply of Goods

21. We consider the current \$500 threshold too low.
22. We anticipate that the prohibition on supplying products exceeding the value of \$500 during the cooling-off period will very likely place R+F at a distinct disadvantage when it enters the Australian market compared to:
 - (a) retailers (with retail stores and/or online stores) who are immediately able to provide skincare products of any value when contracted to do so; and
 - (b) other direct sellers that supply individual products with a value of less than \$500, who are able to supply those products during the cooling-off period.
23. R+F's products are sold both individually and, more commonly, as comprehensive skincare regimens featuring a number of products. Typically, in the United States and Canada, customers may purchase a regimen range (which comprises a number of products) and additional products to complement this regimen, such as serums and eye creams. We expect this to be the case in Australia too. As a result, we expect that sale agreements will likely meet or exceed the \$500 threshold in many circumstances.

Payment

24. R+F considers that the payment prohibitions imposed on direct selling companies under the UCA provisions are anti-competitive and pose undue restrictions on the conduct of business in Australia for three key reasons.
25. First, whereas instore and online retailers are able to provide goods and accept payment at the time of entry into the sale agreement, direct selling companies are unable to deliver the same immediate service. This imposes an unjustified disadvantage on direct selling companies such as R+F and impedes competition between companies selling similar products.
26. Further, in light of the refund requirements imposed by section 84 of the ACL, R+F considers that the current restriction on accepting payment during the cooling-off period is not necessary.
27. Finally, payment processors impose terms and conditions on retailers which are incongruent with the UCA payment prohibition. Specifically, credit card payments must be processed within a narrow time frame after the sale agreement is entered into. In addition, R+F and other direct selling companies would not be permitted to store the credit card details of customers pending the conclusion of the cooling-off period. As such, R+F would be required to contact each customer at the end of the cooling-off period in order to obtain the credit card details necessary for payment. In light of the practical difficulties arising from the UCA payment prohibition, R+F considers the policy of permitting payment during the cooling-off period in other jurisdictions is a preferable approach to the current prohibition under section 86, as it does not produce a discriminatory and anti-competitive result to direct selling industry organisations.

Conclusion

28. In conclusion, R+F submits that section 86 of the ACL should be amended as follows:
 - (a) the value of products which can be supplied during the cooling-off period should be increased from \$500 to \$1,000; and
 - (b) the prohibition on accepting or requiring payment during the cooling-off period should be repealed.