Investigation report no. BI-503

| Summary |  |
| --- | --- |
| **Licensee** | Moreton Media Group Inc. |
| **Station** | 99.7 Bridge FM |
| **Type of service** | Community Broadcasting- Radio |
| **Name of program** | *Friday Metro Mornings with Loz and Rosie* |
| **Date of broadcast** | 24 May 2019 |
| **Relevant legislation** | Schedule 2 to the*Broadcasting Services Act 1992* (the BSA):* paragraph 9(1)(b) [prohibition on broadcast of advertisements]
* paragraph 9(3)(b) [time limit for sponsorship announcements]
 |
| **Date Finalised** | 26 August 2019 |
| **Decision** | No breach of paragraph 9(1)(b) of Schedule 2 to the BSANo breach of paragraph 9(3)(b) of Schedule 2 to the BSA |

Background

On 10 June 2019, the Australian Communications and Media Authority (the ACMA) received a complaint that Moreton Media Group Inc. (the licensee) did not tag advertising material and exceeded the hourly time limit for sponsorship announcements. The complaint related to an interview broadcast on 24 May 2019 during the program *Friday Metro Mornings with Loz and Rosie.* The complainant referred to the interview for an upcoming Health Expo as a ‘ten-minute infomercial’.

On 18 June 2019, the ACMA commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into the licensee’s compliance with the licence conditions at paragraph 9(1)(b) [prohibition on broadcasting advertisements] and paragraph 9(3)(b) [time limit for sponsorship announcements] of Schedule 2 to the BSA.

The licensee

The licensee has held a long-term community broadcasting licence since February 1992, representing the general community interest in the Redcliffe RA1 licence area, Queensland. The expiry date of the current licence is 3 October 2022.

Assessment and submissions

This investigation has considered the following material:

* the complaint received by the ACMA on 10 June 2019
* a submission from the broadcaster dated 30 June 2019
* a recording of *Friday Metro Mornings with Loz and Rosie,* broadcast between 10.00 am and 12.00 pm on 24 May 2019.

When assessing content, the ACMA considers the meaning conveyed to an ‘ordinary reasonable’ listener. This includes the natural, ordinary meaning of the language, context, tenor, tone and any inferences that may be drawn.

Australian courts have considered an ‘ordinary reasonable’ listener to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.[[1]](#footnote-2)

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the relevant licence condition.

The relevant licence conditions for this investigation are in **Attachment A**.

**Issue 1: Did the licensee broadcast advertisements?**

Finding

On 24 May 2019, the licensee did not breach paragraph 9(1)(b) of Schedule 2 to the BSA in relation to the broadcast of an interview during *Friday Metro Mornings with Loz and Rosie*.

Reasons

Under paragraph 9(1)(b) of Schedule 2 to the BSA, community broadcasting licensees are prohibited from broadcasting advertisements.

The BSA does not provide a definition of ‘advertisement’. However, the ACMA has taken the term to be potentially any broadcast that is intended to promote a product or service, regardless of whether payment in cash or in kind has been received by a licensee, or by any employee, agent, contractor or volunteer of the service.[[2]](#footnote-3)

Subclauses 2(1) and 2(2) of Schedule 2 to the BSA set out exceptions to the general prohibition on the broadcast of advertisements by a community broadcasting licensee. This means that a broadcast may contain material that has the characteristics of an advertisement (that is, the material ‘promotes products or services’) if the clause 2 exceptions apply to that material.

In determining whether a licensee has breached the licence condition prohibiting the broadcast of advertisements, the ACMA must consider; whether the material broadcast was of an advertising character; and, if so, whether any of the exceptions at subclauses 2(1) and 2(2) apply to that material.

***Was the material broadcast of an advertising character?***

The recording of the content broadcast between 10.00 am and 12.00 pm on 24 May 2019 contained material of an advertising character.

This material included live and pre-recorded sponsorship announcements and references that were intended to promote the products or services of, or were designed or calculated to draw public attention to, the following businesses:

* Glass Assist (one announcement)
* Volkswagen (one announcement)
* Wild Boar Camper Trailers (two announcements)
* Post Office Hotel (one announcement)
* Breast Screen (one announcement)
* Cactus Jack’s (one announcement)
* Heal Yourself Expo (one announcement; interview with workshop organiser)
* The products ‘Nurofen’, ‘Emulgel’ and ‘Hotteeze’ (referenced by the interviewee)
* AC Car Wholesalers (‘shout out' to an employee by a presenter)

**Do any Clause 2 exceptions apply?**

**Subclause 2(2)(b)**

Sponsorship announcements that acknowledge financial support of the licensee or a program are allowed on community radio. The ACMA generally considers an acknowledgement of a sponsor’s financial support (‘tag’):

* must state the name of the person or organisation that has given support in cash or in kind
* must be attached to each individual sponsorship announcement
* must be clearly heard or visible and understood
* must be in the same language as the sponsorship announcement
* can be placed in any part of a sponsorship announcement, provided it is clear to listeners that the information to be broadcast and/or that has been broadcast is a sponsorship announcement.[[3]](#footnote-4)

The ACMA considers that all eight pre-recorded announcements were appropriately tagged and fall under the exception provided for by paragraph 2(2)(b). These matters are further considered at Issue 2.

**Subclause 2(2)(a)**

Community information material or community promotional material is allowed on community radio. What constitutes community information material or community promotional material is considered on a case-by-case basis. The ACMA generally considers that this material includes:

* material about an appeal by a registered charity, or a non-profit or volunteer group […]
* announcements that can be seen to meet the needs of the community served by the licensee […]
* genuine community information material, such as local sporting events, community theatre or weather warnings
* announcements about goods or services, where the money raised benefits the community, a non-profit group or community organisation […][[4]](#footnote-5)

*Interview with Heal Yourself Expo workshop organiser*

The complaint alleges that from 11.25 am on 24 May 2019, the licensee broadcast an interview which did not tag advertising material for healing products, a health expo and a workshop to be conducted by the interviewee at the expo. The complainant asserts that because the licensee also broadcast tagged sponsorship announcements for the exposition at other times, the interview was an advertisement.

From the material provided, the interview ran for approximately eight minutes and featured an interviewee who was introduced by one of the hosts as an ‘exercise specialist’.

The host mentioned details of the Heal Yourself Expo, located within the licence area. The interviewee provided general information about how to treat and avoid pain caused by exercise, for which she would appear to be a subject matter expert. The interview also provided information about an event to be held in the licence area. As such, the ACMA is satisfied the material was genuine community information material, likely to be of interest to listeners in the licence area.

The licensee has acknowledged that the Heal Yourself Expo held a sponsorship arrangement with the station (which is also evidenced by a 15 second pre-recorded sponsorship announcement elsewhere in the program). However, the licensee confirmed no financial commitment was made for the interview, stating that ‘what Loz and Rosie endeavoured to do with the interview was not to make it a sponsorship interview but an information segment.’

This notwithstanding, the ACMA suggests that, in future, when interviewing subject matter experts who are in some way involved with a station sponsor, it would be prudent to acknowledge the relationship on-air.

**Subclause 2(1)(a)**

The interviewee’s references to medicine and health products and the presenter’s ‘shout out’ to an employee of AC Car Wholesalers were designed or calculated to draw public attention to the products and business. However, the ACMA considers that they were an incidental accompaniment to the broadcast of other matter and, as such, are not taken to be an advertisement, in accordance with subclause 2(1)(a).

As exceptions apply to all material of an advertising character broadcast between 10.00 am and 12.00 pm on 24 May 2019, the licensee has not breached paragraph 9(1)(b) of Schedule 2 to the BSA in relation to this material.

Issue 2: Did the licensee exceed the hourly limit for sponsorship announcements?

Finding

On 24 May 2019, the licensee did not exceed five minutes per hour of sponsorship announcements between 10.00 am and 12.00 pm, and therefore did not breach paragraph 9(3)(b) of Schedule 2 to the BSA.

Reasons

A licensee is permitted to broadcast five minutes of sponsorship announcements in any hour of broadcast. For the purposes of calculation, an hour of broadcast is taken from the start of each clock hour. A sponsorship announcement acknowledges financial support of the licensee by a person or support of a program broadcast on a service provided under the licence. The duration of a sponsorship announcement includes the acknowledgement of support and play-in/play-out music to the announcement.

Licensees are also permitted to broadcast community information or community promotions. Usually licensees received no payment for the broadcast of this type of material and they do not need to be ‘tagged’ with a sponsorship acknowledgement.

Based on the assessment of broadcast material, the ACMA has calculated the durations of the sponsorship announcements on 24 May 2019 as listed in the table below.

**10.00 am to 11.00 am**

|  |  |  |  |
| --- | --- | --- | --- |
| Sponsor | Start Time | Duration (sec) | Comment |
| Glass Assist | 10:02:29 | 22 | Tagged, traffic update intro |
| Volkswagen | 10:03:13 | 10 | Tagged, traffic update outro |
| Wild Boar Camper Trailers | 10:57:05 | 30 | Tagged, news update intro |

**Total Duration of Sponsorship Announcements:** 1 minute and 2 seconds

**11.00 am to 12.00 pm**

|  |  |  |  |
| --- | --- | --- | --- |
| Sponsor | Start Time | Duration (sec) | Comment |
| Heal Yourself Expo | 11:19:59 | 15 | Tagged pre-recorded |
| Post Office Hotel | 11:20:14 | 15 | Tagged pre-recorded |
| Breast Screen | 11:20:29 | 15 | Tagged pre-recorded |
| Cactus Jack’s | 11:51:28 | 5 | Competition spot mentioning ‘our sponsor Cactus Jack’s’ |
| Wild Boar Camper Trailers | 11:58:02 | 30 | Tagged, news update intro |

**Total Duration of Sponsorship Announcements:** 1 minute and 20 seconds

Accordingly, the ACMA is of the view that the licensee did not exceed the time limit for sponsorship announcements between 10.00 am and 12.00 pm on 24 May 2019 and, as such, did not breach paragraph 9(3)(b) of Schedule 2 to the BSA.

Attachment A

Relevant provisions of the *Broadcasting Services Act 1992*

***Issue 1: Did the licensee broadcast advertisements?***

**Schedule 2 - Standard conditions Part 1 – Interpretation**

**2 Interpretation—certain things do not amount to broadcasting of advertisements**

(1)  For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:

(a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

(2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:

(a) community information material or community promotional material; or

(b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence, whether or not the announcement:
(i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
(ii) promotes activities, events, products, services or programs of the person; or

(c) material that announces or promotes a service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the service or services provided under the licence;

is not taken to be the broadcasting of an advertisement.

 […]

**Part 5 - Community broadcasting licences**

**9 Conditions applicable to services provided under community broadcasting licences**

(1) Each community broadcasting licence is subject to the following conditions:

[…]

(b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in this clause;

Interpretation of advertising taken from the *Community Broadcasting Sponsorship Guidelines 2008*[[5]](#footnote-6)

In investigating complaints, the ACMA has previously had regard to the following:

* The High Court’s consideration of the meaning of the term ‘advertising’ in the context of the former *Broadcasting Act 1942*:

It would seem to be used in a broad general sense which would encompass a broadcast or telecast of material ‘designed or calculated to draw public attention’ to something … regardless of whether the broadcast or telecast ‘serves a purpose other than that of advertising’.[[6]](#footnote-7)

* The plain English definition in the *Macquarie Dictionary* (Fourth Edition), which defines ‘advertisement’ as follows:

Advertisement: *noun* any device or public announcement, as a printed notice in a newspaper, a commercial film on television, a neon sign, etc., designed to attract public attention, bring in custom, etc.

Accordingly, an advertisement is potentially any broadcast that is intended to promote a product or service, regardless of whether payment in cash or in kind has been received by a licensee, or by any employee, agent, contractor or volunteer of the service.

Issue 2: Did the licensee exceed the hourly limit for sponsorship announcements?

**Schedule 2—Standard conditions**

**Part 5—Community broadcasting licences**

**9—Conditions applicable to services provided under community broadcasting licences**

[…]

1. A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:

[…]

(b) […] 5 minutes in any hour of broadcasting on that service.

[…]

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-2)
2. *ACMA Community Broadcasting Sponsorship Guidelines 2008*, p. 3 at https://www.acma.gov.au/-/media/Community-Broadcasting-and-Safeguards/Advice/pdf/Community-Broadcasting-Sponsorship-Guidelines-2008.PDF. [↑](#footnote-ref-3)
3. *Community Broadcasting Sponsorship Guidelines 2008*, page 14. [↑](#footnote-ref-4)
4. *Community Broadcasting Sponsorship Guidelines 2008*, page 9. [↑](#footnote-ref-5)
5. *Community Broadcasting Sponsorship Guidelines 2008,* p3. [↑](#footnote-ref-6)
6. *Australian Capital Television Pty Ltd and the State of New South Wales v The Commonwealth* (1992) 177 CLR 106 at 166. [↑](#footnote-ref-7)