Investigation report no. BI-607

| Summary |  |
| --- | --- |
| **Licensee [service]** | Foxtel Cable Television Pty Ltd [FOX Sports] |
| **Finding** | No breach of paragraph 10(1)(a) of Schedule 2  [tobacco advertising] |
| **Relevant legislation** | *Broadcasting Services Act 1992* |
| **Programs [type]** | *2021 Bahrain Grand Prix* and *2021 Emilia Romagna Grand Prix* [live sport] |
| **Dates of broadcasts** | 29 March 2021 and 18 April 2021 |
| **Date finalised** | 13 December 2021 |
| **Type of service** | Subscription—television |
| **Attachments** | **A** – extracts from the complaint to the ACMA  **B** – extracts from the licensee’s submissions to the ACMA  **C –** relevant legislation and the ACMA’s approach to assessing content |

Background

In June 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the live subscription television broadcast of 2 Formula 1 motor sport races for the *2021 Bahrain Grand Prix*, broadcast on 29 March 2021 (**Bahrain GP**) and the *2021 Emilia Romagna Grand Prix* with thebroadcast commencingon 18 April 2021 (**Emilia GP**) (the **Programs**).

The ACMA received a complaint that alleged the Programs included tobacco advertising in the form of sponsorship branding for ‘Mission Winnow’, ‘Vuse’ and ‘Velo’.

The complaint referred to broadcasts for each event across multiple days. The ACMA has limited this investigation to the broadcasts of the Grand Prix races (not including practice or qualifying sessions).

The Programs were broadcast on FOX Sport by Foxtel Cable Television Pty Ltd (**the licensee**). The Foxtel website includes the following details about ‘Formula 1’ and their coverage:

Every practice, qualifying session and race live from the 2021 FIA Formula One World Championship™

Expert commentary and analysis from the Sky Sports team[[1]](#footnote-2)

The ACMA has investigated the licensee’s compliance with paragraph 10(1)(a) of Schedule 2 to the BSA, which provides that it is a condition of the licensee’s licence that the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992* (the **TAP Act**) broadcast a tobacco advertisement within the meaning of the TAP Act. Section 9 of the TAP Act defines ‘tobacco advertisement’ for the purposes of that Act. Section 13 of the TAP Act, which is an offence provision, relevantly provides that a person must not broadcast a tobacco advertisement in Australia.

Issue: Tobacco Advertising

Relevant legislation

**Schedule 2 to the BSA: Standard Conditions**

**10 Conditions applicable to subscription television broadcasting licences**

1. Each subscription television broadcasting licence is subject to the following conditions:
2. The licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act.

[…]

Further extracts of the relevant provisions are at **Attachment C**.

Finding

The licensee did not breach paragraph 10(1)(a) of Schedule 2 to the BSA.

Reasons

To assess compliance, the ACMA has addressed the following questions:

* Did the licensee broadcast a ‘tobacco advertisement’ within the meaning of the TAP Act?
* In determining whether the licensee had broadcast a ‘tobacco advertisement’, the ACMA has considered whether the broadcast promoted or publicised:
* a registered trade mark in respect of goods that are or include tobacco products – paragraph 9(1)(c) under the TAP Act; or
* the whole or a part of the name of a person who isa manufacturer of tobacco products, and whose name appears on, or on the packaging of, some or all of those products – paragraph 9(1)(e) under the TAP Act; or
* any other words or designs that are closely associated with a tobacco product or a range of tobacco products – paragraph 9(1)(f) under the TAP Act.
* Did the licensee contravene the TAP Act (specifically section 13 thereof) – i.e., did the licensee intend to broadcast a tobacco advertisement?

**Mission Winnow**

Mission Winnow is a collaboration between Philip Morris International (PMI), Scuderia Ferrari (Ferrari) and Ducati Corse (Ducati). According to the Mission Winnow website:

We are committed to constant improvement to transform not only our company but an entire industry for the 1.1 billion people who smoke and those around them.[[2]](#footnote-3)

The Mission Winnow website[[3]](#footnote-4) includes 3 separate logos for Mission Winnow that were also visible during the Programs. The ACMA observed that these logos appeared on the livery of the Ferrari cars including the rear wing and the sides of the car and were also visible elsewhere throughout the Programs, including the Ferrari Formula 1 crew members’ clothing and accessories, such as helmets, headphones and hats.

The complainant submitted:

Tobacco brands and advertising have been broadcast during the running of two Formula 1 Grands Prix this year. […] The Philip Morris brand “Mission Winnow” features prominently on all Ferrari cars and equipment.

[…] the official team name for Ferrari is actually "Scuderia Ferrari Mission Winnow”. Every broadcast of anything related to the Ferrari F1 cars, therefore, is an intentional broadcast of that tobacco company’s branding.

The licensee submitted:

The Mission Winnow […] branding appeared throughout the Programs on the two Ferrari […] cars and drivers competing in these races, and on the uniforms of the pit crew.

***Did the licensee broadcast a ‘tobacco advertisement’ within the meaning of the TAP Act?***

* *Did the broadcast promote or publicise a registered trade mark for tobacco products?*

The licensee submitted:

[…] while we note that the two applications in Australia for registration under the Trade Marks Act 1995 of the words ‘Mission Winnow’ and a version of the Mission Winnow logo have since been registered, they continue to exclude class 34 goods that are or include tobacco goods.

[…]

Foxtel submits that the Mission Winnow branding broadcast within the Programs did not give publicity to or otherwise promote any of the matters listed in paragraphs (a) – (f) of subsection 9(1) of the TAP Act.

At the times of the broadcast of the Programs, Mission Winnow had 3 registered trade marks under the *Trade Marks Act 1955,* 2 for ‘figurative’ images[[4]](#footnote-5) and one for the words ‘Mission Winnow’.[[5]](#footnote-6)

The trade marks were registered under Classes 9, 35, 41 and 42.

Class 9 ‘Goods and Services’ for the trade marked words Mission Winnow included:

[…] batteries for electronic cigarettes; batteries for electronic devices that are used for heating tobacco, chargers for electronic devices that are used for heating tobacco; USB chargers for electronic devices that are used for heating tobacco; car chargers for devices that are used for heating tobacco; battery chargers for electronic cigarettes.

Class 35 ‘Goods and Services’ for the trade marked words Mission Winnow included:

Marketing research; investigations regarding commercial matters; retail services and online retail services for tobacco products to be heated, electronic cigarettes, electronic smoking apparatus.

Classes 41 and 42 do not mention or include any reference to tobacco, electronic cigarettes, or smoking. They include services such as ‘teaching’, ‘training’ and ‘scientific research’.

The term ‘tobacco product’ is defined in section 8 of the TAP Act and relevantly includes:

* tobacco (in any form), or
* any product – that contains tobacco as its main or a substantial ingredient; and that is designed or intended for human consumption or use: or
* a cigarette paper, cigarette roller or pipe.

Although the ACMA notes that Class 9 goods registered under the Mission Winnow trade marks include batteries and chargers for devices used for heating tobacco products, none of the goods listed are in respect of goods that are or include ‘tobacco products’ as defined in the TAP Act.

It is noted that the Mission Winnow trade marks are also registered under Class 35. According to the IP Australia website, ‘Class 35 services are those provided by persons or enterprises that directly assist in the operation and management of another commercial or industrial enterprise’.[[6]](#footnote-7) They include ‘advertising; business management, organisation and administration; office functions’.[[7]](#footnote-8)

The services listed under Class 35 for Mission Winnow include ‘retail services and online retail services for tobacco products to be heated’. While the ACMA acknowledges that the ‘retail services’ and ‘online retail services’ are stated as being for ‘tobacco products to be heated’, the test for 9(1)(c) is in respect of ‘goods’ that are or include ‘tobacco products’ and not services, hence the Mission Winnow trade marks would not be in respect of ‘goods’ that are or include ‘tobacco products’ for the purposes of paragraph 9(1)(c) of the TAP Act.

Consequently, it follows that the broadcasting of the Programs that included depictions of Mission Winnow registered trade marks did not promote or publicise a registered trade mark for tobacco products.

*Did the broadcasts promote or publicise the whole or a part of the name of a person who is a manufacturer of tobacco products, and whose name appears on, or on the packaging of, some or all of those products?*

The complainant noted that Mission Winnow branding has an association with PMI. PMI (also known as ‘Philip Morris International’ or ‘Philip Morris’) is a manufacturer of tobacco products and cigarettes.

The licensee submitted that:

[…] the broadcast of the Programs did not promote or publicise the whole or a part of the name of a person who is a manufacturer of tobacco products, and whose name appears on, or on the packaging of some or all of those products. The name of the relevant person who manufactures tobacco products and whose name appears on the packaging of some or all of those products is ‘Philip Morris International’ or ‘PMI’. Foxtel’s broadcast of the Programs did not include these names. Rather, the name associated with the Ferrari team was ‘Mission Winnow’.

Paragraph 9(1)(e) of the TAP Act only applies where the advertisement ‘promotes’ or ‘publicises’ the ‘name’ of a manufacturer of tobacco products.

The broadcast did not include the names ‘Philip Morris International’ or ‘Philip Morris’, nor the acronym ‘PMI’.

Accordingly, the ACMA considers that the broadcast did not promote or publicise the whole or a part of the name of a person who is a manufacturer of tobacco products, and whose name appears on, or on the packaging of some or all of those products.

*Did the broadcast promote or publicise any other words or designs that are closely associated with a tobacco product or a range of tobacco products?*

The licensee submitted:

[…] Foxtel does not consider that the broadcast of the Programs promoted or publicised words or designs that are closely associated with a tobacco product or a range of tobacco products. Although there is an affiliation between Mission Winnow and PMI, Foxtel maintains the position that there is insufficient evidence to indicate a ‘close association’ between Mission Winnow and tobacco products

As noted above, Mission Winnow is a collaboration between PMI, Ferrari and Ducati. As also noted above, the livery of the Ferrari Formula 1 cars, the crew members’ clothing and some accessories (such as helmets, headphones and hats) in the Programs, included ‘Mission Winnow’ registered trade marks.

In assessing whether there is a ‘close association’ between Mission Winnow and tobacco products, the ACMA has considered a number of factors relevant at the time of broadcast.

The ACMA notes that PMI is a corporation widely known to be a manufacturer of tobacco products and that the connection between Mission Winnow and PMI is clear from the Mission Winnow website.

However, while the Mission Winnow website refers to a commitment to transform an entire industry for the 1.1 billion people who smoke, ‘smoke free alternatives’, and scientific transparency relating to research into ‘developing and testing less harmful alternatives to smoking’, the website does not contain references to PMI tobacco products, nor does it appear to promote or publicise continued smoking or the purchase or use of tobacco products.[[8]](#footnote-9)

The ACMA also notes that the Ferrari Formula 1 team has had an historical association with Marlboro (a PMI cigarette brand). The ACMA acknowledges that there have been some similarities between the Mission Winnow logo and the Marlboro logo, including the use of red and white arrow/chevron design elements. However, the Mission Winnow logos that appeared on the cars in the Programs were coloured red and green, and also red and black in other contexts, such as on the Ferrari crew’s uniform.

While some similarity may exist, the ACMA does not consider that the two logos are so similar that the promotion of the Mission Winnow logo would lead an ordinary reasonable viewer to conclude that there was a close association between Mission Winnow and Marlboro tobacco products.

The ACMA acknowledges that there has been some media attention relating to Mission Winnow in both the mainstream media and more specialist sports and motorsports sources since Mission Winnow appeared in association with the Ferrari Formula 1 team in the Japanese Grand Prix in October 2018.[[9]](#footnote-10) As a result, there may be increased public awareness that Mission Winnow is associated with PMI. Notwithstanding this, the ACMA considers that there is no evidence that this media coverage would result in the Mission Winnow logos being closely associated with a tobacco product or a range of tobacco products.

As mentioned previously, Mission Winnow has trade marks for Class 35 services, which include ‘retail services and online retail services for tobacco products to be heated’. However, the ACMA has found no evidence that Mission Winnow is currently providing ‘retail services’ or ‘online retail services’ for PMI or any other entities. Further, the ACMA has found no evidence that Mission Winnow sells ‘tobacco products’ and the Mission Winnow website states that Mission Winnow ‘does not advertise or promote any PMI-branded products’.[[10]](#footnote-11)

Consequently, the ACMA considers that the broadcasting of the Mission Winnow name and designs did not promote or publicise, any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs that are closely associated with a tobacco product, or a range of tobacco products as contemplated by paragraph 9(1)(f) of the TAP Act.

Taking account of the elements of section 9 of the TAP Act, the ACMA considers that the licensee did not broadcast a tobacco advertisement within the meaning of the TAP Act by broadcasting the words Mission Winnow or associated logos of Mission Winnow during the Programs.

**Vuse**

According to the British American Tobacco (BAT) website, Vuse is a vaping brand and ‘one of BAT’s ‘new category of products’.[[11]](#footnote-12) According to the Vuse Australia website:

Vuse's mission is simple: to provide Australian adults who smoke or vape with high quality vaping products. With Vuse, you can feel confident you’re inhaling a quality e Liquid blend.[[12]](#footnote-13)

The website also features products for sale such as ‘vape pens’ and ‘ePod e Liquid pods’, which include flavours such as ‘Aromatic Tobacco’, ‘Golden Tobacco’, ‘Peppermint Tobacco’ and ‘Rich Tobacco’, as well as a range of other flavours that do not feature the word tobacco in their name.[[13]](#footnote-14)

The complainant submitted that during the Programs, ‘every McLaren car features the brand name of a BAT product such as Vuse or Velo’.

The licensee’s submission acknowledged that the ‘Vuse branding appeared’ on the 2 McLaren cars.

The ACMA notes that during the broadcast of the Bahrain GP, the livery of the McLaren Formula 1 cars featured Vuse branding, including on the sides of the car and near the driver’s seat. The McLaren cars featured consistently throughout the Bahrain GP and the word Vuse and associated branding could be seen on the McLaren cars at various times throughout the broadcast.

The ACMA did not observe any reference to Vuse during the broadcast of the Emilia GP.

***Did the licensee broadcast a ‘tobacco advertisement’ within the meaning of the TAP Act?***

* *Did the broadcast promote or publicise a registered trade mark for tobacco products?*

The licensee submitted:

[…] At the time of broadcast of the Programs, it is acknowledged that the words ‘VELO’ and ‘VUSE’ were registered under class 34 of the *Trade Marks Act 1995* in respect of goods that include tobacco.

The ACMA understands that 2 trade marks for the word ‘Vuse’[[14]](#footnote-15) (amongst other trade marks related to Vuse[[15]](#footnote-16)) were registered under the *Trade Marks Act 1955* at the time of the Bahrain GP.

Both trade marks for the word ‘Vuse’ are registered under Class 34 and included the following goods and services:

Tobacco; smokers' articles; matches; cigarettes, cigars, and pipes; electronic cigarettes, cigars, and pipes, and accessories sold therewith, including chargers, cartridges, and carrying cases; tobacco substitutes; lighters for cigarettes, cigars, and pipes.

Multiple products featured in the class 34 description above would be considered ‘tobacco products’ under the definition of ‘tobacco product’ in section 8 of the TAP Act, including tobacco, cigars, pipes and cigarettes. Consequently, as the word ‘Vuse’ was featured as part of the broadcast of the Bahrain GP*,* ‘the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* in respect of goods that are or include tobacco products’ was broadcast.

However, the licensee further submitted:

[…] something more than the mere depiction of a trade mark must be required in order for material to constitute a ‘tobacco advertisement’. The material must “*give publicity to, or otherwise promote*” the relevant trade mark.

[…]

Foxtel does not consider that the broadcast of the Programs contained any positive endorsement of VELO or VUSE and no attention is drawn to the depictions of their respective trade marks in a way that publicises or promotes them. The Programs merely included the images of the VELO and VUSE branding as sponsors of the McLaren team.

The ACMA does not agree with the licensee’s submission that the broadcast of the word Vuse on the McLaren Formula 1 cars during the Bahrain GPdid not promote or publicise a registered trade mark for tobacco products. The ACMA is of the view that the key purpose of sponsorship agreements is to increase brand exposure and brand awareness by publicising or promoting branding.

The BAT website[[16]](#footnote-17) refers to the attributes and benefits of its partnership with McLaren, including:

* giving ‘truly global marketing’ platforms
* growing our portfolio of new category products, which include our leading vapour range, Vuse, and our modern oral product, Velo
* significantly increased branding positions on the McLaren Formula 1 car – including highly visible new sidepod branding, inside halo and front wing branding positions
* a commitment for the two companies to co-create marketing content to drive increased awareness of the partnership.

The ACMA considers that the broadcasting of the registered trade mark on the McLaren Formula 1 cars gave publicity to, or otherwise promoted, the Vuse trade mark to viewers of the Bahrain GPbroadcast.

Consequently, the ACMA considers that the licensee broadcast a ‘tobacco advertisement’ within the meaning of paragraph 9(1)(c) of the TAP Act.

As the ACMA has found that the licensee broadcast a ‘tobacco advertisement’ for the purposes of paragraph 9(1)(c) of the TAP Act, it has not considered whether the name of a manufacturer of tobacco products that appears on packaging was promoted, as contemplated by paragraph 9(1)(e), or whether there was a ‘close association’ as contemplated by paragraph 9(1)(f) of the TAP Act.

**Velo**

Like Vuse, Velo is also referred to on the BAT website as one of its ‘new category of products’.[[17]](#footnote-18) Velo is a nicotine pouch brand. Velo does not appear to have an Australian website, however, according to its UK website:

VELO is a nicotine pouch invented in Scandinavia. The pouch contains nicotine and high-quality ingredients. You tuck it under your lip, and while it’s on your gum, nicotine is released and absorbed. So anytime, anywhere, any adventure, VELO can be with you.[[18]](#footnote-19)

The website features Velo pouches for sale, available in a variety of flavours such as ‘VELO X McLaren Racing’, ‘Ruby Berry’, ‘London Flair’ and ‘Polar Mint’.

The complainant submitted:

[…] The British American Tobacco brand of tobacco pouches “Velo” […] features on McLaren cars and equipment.

As with Vuse above, the licensee submitted that the Velo branding appeared on the 2 McLaren cars.

During the Emilia GP, the word Velo was featured on the side and front wing of the McLaren Formula 1 cars and could be seen at various times throughout the broadcast.

The ACMA did not see any reference to Velo during the broadcast of the Bahrain GP.

***Did the licensee broadcast a ‘tobacco advertisement’ within the meaning of the TAP Act?***

* *Did the broadcast promote or publicise a registered trade mark for tobacco products?*

The licensee submitted that the word Velo was a registered trade mark under class 34 of the *Trade Marks Act 1995* in respect of goods that include tobacco.

The ACMA confirmed that the word Velo[[19]](#footnote-20) and the Velo logo[[20]](#footnote-21) were registered under the *Trade Marks Act 1955* at the time of the broadcast of the Emilia GP.

The trade mark for the word Velo was registered under Class 34 for goods and services that included:

Cigarettes; tobacco, raw or manufactured; tobacco free oral nicotine pouches (not for medical use); snuff with tobacco; snus with tobacco; snuff without tobacco; snus without tobacco; roll your own tobacco; pipe tobacco; tobacco products; tobacco substitutes (not for medical purposes); cigars; cigarillos; lighters for smokers; matches; smokers' articles; cigarette paper, cigarette tubes, cigarette filters; pocket apparatus for rolling cigarettes; hand held machines for injecting tobacco into paper tubes; electronic cigarettes; liquids for electronic cigarettes; tobacco products for the purpose of being heated.

Multiple goods featured in the class 34 description above would be considered ‘tobacco products’ under the definition of ‘tobacco product’ in section 8 of the TAP Act.

The licensee acknowledged that a registered trade mark for tobacco products, in the form of the word Velo, was featured in the Programs. However, as with Vuse, the licensee submitted that something more than the mere depiction of a trade mark of Velo must be required to constitute a ‘tobacco advertisement’.

As discussed above, the ACMA considers that the key purpose of sponsorship agreements is to increase brand exposure and brand awareness by publicising or promoting branding, and the ACMA considers that the inclusion of branding on the cars does in fact give publicity to, and promotes, the brand. Therefore, the ACMA considers that the licensee’s broadcast of the Emilia GP gave publicity to or otherwise promoted a registered trade mark for Velo to viewers of the race.

As the ACMA has found that the licensee did broadcast a ‘tobacco advertisement’ within the meaning of paragraph 9(1)(c) of the TAP Act, it has not considered whether the name of a manufacturer of tobacco products that appears on packaging was promoted, as contemplated by paragraph 9(1)(e), or whether there was a ‘close association’ as contemplated by paragraph 9(1)(f) of the TAP Act.

***Did the licensee intend to broadcast a tobacco advertisement (for Vuse and Velo)?***

The test of intention for a contravention of section 13 of the TAP Act has been stated in *Channel Seven Adelaide Pty Ltd v ACMA* [2014] FCAFC 32,[[21]](#footnote-22) where the majority of the Federal Court of Australia Full Court found that the person broadcasting must be proved not only to intend to broadcast material which falls within the statutory definition of ‘tobacco advertisement’, but also to intend to promote, or give publicity to, smoking or tobacco products.

The requirement that a licensee intends to promote, or give publicity to, smoking or tobacco products creates a high threshold that the ACMA is compelled to consider when determining whether a breach of section 13 of the TAP Act has occurred.

The licensee submitted:

Foxtel was not the producer of the Programs and was not involved in the sponsorship relationships between PMI and Ferrari or BAT and McLaren. The Programs were broadcast by Foxtel live‐to‐air, which incidentally included fleeting images of the […] VELO and VUSE branding. […] Foxtel submits that it could not have held the requisite intention to promote, or give publicity to, smoking or tobacco products by incidentally broadcasting the […] VELO and VUSE branding […]

While the ACMA has determined above, that the licensee did broadcast material which falls within the statutory definition of ‘tobacco advertisement’, according to the information available to the ACMA at this time, the ACMA could not infer that the Licensee had the necessary intent to promote, or give publicity to, smoking or tobacco products when the Programs were broadcast.

However, the ACMA considers that determining whether the requisite intention has been met is something that it will assess on a case-by-case basis. In this regard, the ACMA considers that a declaration by a licensee that it does not consider something to be a ‘tobacco advertisement’, or that it did not intend to promote or give publicity to smoking or tobacco products because it did not make or produce the content, but merely broadcast it are not factors that are necessarily determinative of a lack of intention to promote, or give publicity to, smoking or tobacco products. Each case will rest on its own facts. It is for the ACMA to investigate and assess those facts to determine the broadcaster’s intent concerning broadcasting content with a tobacco advertisement.

As a result of this finding, there is no requirement for the ACMA to further consider the complaint and licensee submissions about the exemptions at section 14 of the TAP Act about whether such advertising was accidental or incidental.

Accordingly, the ACMA finds that the licensee did not breach the licence condition at paragraph 10(1)(a) of Schedule 2 to the BSA.

Attachment A

Complaint

***Extracts of the Complaint to the ACMA dated 20 April 2021:***

[…]

Tobacco brands and advertising have been broadcast during the running of two Formula 1 Grands Prix this year being 12-14 March form Bahrain, and 26-28 March from Imola, on two Foxtel channels. Subsequent broadcasting has occurred when other stations have televised replays or highlights. The Philip Morris brand “Mission Winnow” features prominently on all Ferrari cars and equipment. The British American Tobacco brand of tobacco pouches “Velo” likewise features on McLaren cars and equipment.

In reference to the *Tobacco Advertising Prohibition Act 1992*, part 3, division 1, section 13, I would humbly suggest that these broadcasts are a clear breach of the legislation.

With regards to section 14, included below, I would argue that this advertising is not accidental or incidental. It cannot be accidental as the appearance of the branding is entirely predictable. Every Ferrari car has the MW logo, and every McLaren car features the brand name of a BAT product such as “Vuse” or “Velo”.

Likewise, it cannot be regarded as incidental. The branding is intrinsically attached to the teams. For example, the official team name for Ferrari is actually "Scuderia Ferrari Mission Winnow”. Every broadcast of anything related to the Ferrari F1 cars, therefore, is an intentional broadcast of that tobacco company’s branding. The team name itself cannot be regarded as “minor”, or “without intention”.

Lastly, regarding section 14, there is an indirect benefit for the broadcaster as a result of displaying these brands. Both teams are performing very well so far this year. An Australian driver, […], is one of the McLaren drivers. Without the tobacco sponsorship they may not be as competitive, and therefore ratings (and hence advertising revenue) would be less.

[…]

Attachment B

Licensee’s submissions

***Extracts from licensee submission to the ACMA dated 15 July 2021:***

We refer to […] a complaint made to the Australian Communications and Media Authority (**ACMA**) in relation to the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix* broadcast on FOX Sports on 28 March 2021 and 18 April 2021, respectively (**Programs**).

We understand the complainant is concerned that Foxtel’s broadcast of the Mission Winnow, VELO and VUSE branding within the Programs constitutes a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the *Tobacco Advertising Prohibition Act 1992* Cth (**TAP Act**). Consequently, the ACMA is investigating Foxtel’s compliance with paragraph 10(1)(a) of Schedule 2 of the *Broadcasting Services Act 1992* (Cth) (**BSA**). We note that the ACMA previously investigated Foxtel’s compliance in relation to the broadcast of the Mission Winnow branding at the *Japanese Formula One Grand Prix[[22]](#footnote-23)* and the *Monaco Formula One Grand Prix[[23]](#footnote-24)* and found that Foxtel had not breached the BSA.

Foxtel provides written submissions on compliance with paragraph 10(1)(a) of Schedule 2 of the BSA with respect to the Programs below.

**1. Background**

Philip Morris International (**PMI**) is a longstanding partner of the Formula One team, Scuderia Ferrari (**Ferrari**). Ferrari’s livery incorporates the logo of PMI’s ‘Mission Winnow’ branding. According to the Mission Winnow website, Mission Winnow is a change lab focused on reframing global conversations, sparking open debate, connecting people and supporting the realisation of innovative ideas.[[24]](#footnote-25) According to PMI’s Vice‐President of Internal Communications, Tommaso di Giovanni, Mission Winnow “*is not meant to ‘promote’ any product or brand. Mission Winnow is an initiative to encourage dialogue around positive change; our own and that of others*.”[[25]](#footnote-26)

In 2019, British American Tobacco (**BAT**) entered into a multi‐year global partnership with the Formula One team, McLaren. According to the BAT website, the partnership gives BAT global marketing and innovation platforms to help accelerate their commitment to achieving “A Better Tomorrow” by growing their portfolio of new category products, which includes VELO and VUSE.[[26]](#footnote-27)

The Programs were a live broadcast of the *2021 Bahrain Grand Prix*, a Formula One racing event held on 28 March 2021 at the Bahrain International Circuit, Sakhir, Bahrain and the *2021 Emilia Romagna Grand Prix*, a Formula One racing event held on 18 April 2021 at the Autodromo Enzo e Dino Ferrari, Imola, Italy. The Mission Winnow, VELO and VUSE branding appeared throughout the Programs on the two Ferrari and two McLaren cars and drivers competing in these races, and on the uniforms of the pit crew.

**2. Compliance with paragraph 10(1)(a) of Schedule 2 of the BSA**

Paragraph 10(1)(a) of Schedule 2 of the BSA provides as follows:

*(1) Each subscription television broadcasting licence is subject to the following conditions:*

*(a) the licensee will not, in contravention of the Tobacco Advertising Prohibition Act 1992, broadcast a tobacco advertisement within the meaning of that Act;*

Foxtel submits that it complied with paragraph 10(1)(a) of Schedule 2 of the BSA when the Programs were broadcast on FOX Sports as the Programs did not contain a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the TAP Act.

In the event the ACMA considers the Programs contained a ‘tobacco advertisement’, Foxtel submits that this was not broadcast in contravention of the TAP Act because this was permitted under section 14 of the TAP Act and Foxtel did not have the requisite intention to be found in breach of section 13 of the TAP Act. Accordingly, Foxtel submits that it has complied with paragraph 10(1)(a) of Schedule 2 of the BSA.

**2.1 Did Foxtel broadcast a ‘tobacco advertisement’?**

Subsection 9(1) of the TAP Act relevantly defines a ‘tobacco advertisement’ to include:

*any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:*

*(a) …*

*(b) …*

*(c) the whole or a part of a trade mark that is registered under the Trade Marks Act 1955 in respect of goods that are or include tobacco products; or*

*(d) …*

*(e) the whole or a part of the name of a person:*

*(i) who is a manufacturer of tobacco products; and*

*(ii) whose name appears on, or on the packaging of, some or all of those products; or*

*(f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).*

***(a) Mission Winnow***

As stated in our previous submissions to the ACMA and consistent with the ACMA’s findings in Investigation Reports No. BI‐458 and BI‐515, Foxtel submits that the Mission Winnow branding broadcast within the Programs did not give publicity to or otherwise promote any of the matters listed in paragraphs (a) – (f) of subsection 9(1) of the TAP Act.

With respect to paragraph (c) of subsection 9(1), while we note that the two applications in Australia for registration under the Trade Marks Act 1995 of the words ‘Mission Winnow’[[27]](#footnote-28) and a version of the Mission Winnow logo[[28]](#footnote-29) have since been registered, they continue to exclude class 34 goods that are or include tobacco goods.

In relation to paragraph (e), consistent with the ACMA’s finding in Investigation Report No. BI‐515, Foxtel submits that the broadcast of the Programs did not promote or publicise the whole or a part of the name of a person who is a manufacturer of tobacco products, and whose name appears on, or on the packaging of some or all of those products. The name of the relevant person who manufactures tobacco products and whose name appears on the packaging of some, or all of those products is ‘Philip Morris International’ or ‘PMI’. Foxtel’s broadcast of the Programs did not include these names. Rather, the name associated with the Ferrari team was ‘Mission Winnow’.

With respect to paragraph (f), Foxtel does not consider that the broadcast of the Programs promoted or publicised words or designs that are closely associated with a tobacco product or a range of tobacco products. Although there is an affiliation between Mission Winnow and PMI, Foxtel maintains the position that there is insufficient evidence to indicate a ‘close association’ between Mission Winnow and tobacco products, a statement supported by the ACMA in Investigation Report No. BI‐515.

We therefore maintain that the Mission Winnow branding broadcast within the Programs was not a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the TAP Act.

***(b) VELO and VUSE***

At the time of broadcast of the Programs, it is acknowledged that the words ‘VELO’[[29]](#footnote-30) and ‘VUSE’[[30]](#footnote-31) were registered under class 34 of the Trade Marks Act 1995 in respect of goods that include tobacco.

Foxtel therefore submits that the relevant provisions of subsection 9(1) with respect to VELO and VUSE are 9(1)(c) and 9(1)(e).

With respect to paragraph (c), Foxtel submits that something more than the mere depiction of a trade mark must be required in order for material to constitute a ‘tobacco advertisement’. The material must “*give publicity to, or otherwise promote*” the relevant trade mark.

In previous investigations, the ACMA has expressed the view that:

The phrase ‘that gives publicity to’ within the definition of section 9(1) is qualified by the phrase ‘or otherwise promotes or is intended to promote’. This means the publicity must have some specific promotional element. Accordingly, a broadcast which gives publicity to smoking but does not promote smoking will not fall within the definition of ‘tobacco advertisement’.[[31]](#footnote-32)

Foxtel does not consider that the broadcast of the Programs contained any positive endorsement of VELO or VUSE and no attention is drawn to the depictions of their respective trade marks in a way that publicises or promotes them. The Programs merely included the images of the VELO and VUSE branding as sponsors of the McLaren team.

In relation to paragraph (e), Foxtel submits that the broadcast of the Programs did not promote or publicise the whole or a part of the name of a person who is a manufacturer of tobacco products, and whose name appears on, or on the packaging of some or all of those products. The name of the relevant person who manufactures tobacco products and whose name appears on the packaging of some, or all of those products is ‘British American Tobacco’ or ‘BAT’. Foxtel’s broadcast of the Programs did not include these names. Rather, the names associated with the McLaren team were ‘VELO’ and ‘VUSE’.

We therefore submit that the VELO and VUSE branding broadcast within the Programs was not a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the TAP Act.

**2.2 Was the broadcast of the tobacco advertisement permitted under the TAP Act?**

Section 13 of the TAP Act provides:

*(1) A person must not broadcast a tobacco advertisement in Australia or Norfolk Island on or after 1 July 1993 otherwise than as permitted by section 14.*

Section 14 of the TAP Act provides:

*A person may broadcast a tobacco advertisement if:*

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

*(b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).*

If the ACMA determines that the Mission Winnow, VELO and/or VUSE branding contained within the Programs constituted a ‘tobacco advertisement’ then Foxtel submits that this material was nevertheless permitted under section 14 of the TAP Act as:

* the material was an incidental accompaniment to the broadcasting of other matter; and
* Foxtel did not receive any direct or indirect benefit for broadcasting the material in question.

***(a) Incidental accompaniment***

The word ‘incidental’ has previously been interpreted by the ACMA, with reference to case law,[[32]](#footnote-33) in the context of section 14 of the TAP Act as “*happening…in fortuitous or subordinate conjunction*” with other matter. As expressed by the ACMA in previous investigations, a tobacco advertisement will therefore only be regarded as an ‘incidental accompaniment’ if it is subordinate to the other matter being broadcast. If a tobacco advertisement dominates or forms a substantial feature of a program, scene or segment, we understand it will not be regarded by the ACMA as an ‘incidental accompaniment’.[[33]](#footnote-34)

In Investigation Report No. 3145,[[34]](#footnote-35) the ACMA considered that the visual images of the Marlboro logo displayed on moving vehicles, still vehicles during interviews and on the jackets of drivers were broadcast contemporaneously with, and in clear subordination to, other matter, namely the 1989 Tour de Corse car rally. The ACMA therefore found that the broadcast of the Marlboro logo was an incidental accompaniment to the broadcast of other matter. In Investigation Report No. 2726,[[35]](#footnote-36) the ACMA was also satisfied that the Benson & Hedges billboards that were displayed in the opening sequence of the Test Series and during the KFC Classic Catches Competition were broadcast as an ‘incidental accompaniment’ to ‘other matter’ because they were broadcast contemporaneously with, and in subordination to, the ‘other matter’, namely the opening sequence of the Test Series and the KFC Classic Catches Competition broadcast within the Test Series.

**VELO and VUSE**

Foxtel submits that the images of the VELO and VUSE branding contained within the Programs did not form a substantial component of the broadcasts. The images were fleeting throughout, with the McLaren teams comprising only two cars out of a field of twenty that competed in the *2021 Bahrain Grand Prix* and in the *2021 Emilia Romagna Grand Prix*. Further, there was no extended or inappropriate focus on the VELO and VUSE branding, with the branding receiving similar treatment to those of other sponsors. Foxtel considers that the visual images of the VELO and VUSE branding instead happened in subordinate conjunction with ‘other matter’, namely the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix*.

Further, we note that the footage from the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix* was not produced by Foxtel and, instead, supplied by Sky Sport, a supplier to producefeeds of Formula One events. In Investigation Report No. 3145,[[36]](#footnote-37) the ACMA noted that the visualimages of the Marlboro logo displayed on moving vehicles and driver jackets were so intertwinedwith the other matter it would have been difficult to remove or obscure each image. Similarly, inthese circumstances, Foxtel was not able to exclude any VELO or VUSE branding without affectingthe integrity of the broadcast, as (i) Foxtel had no control over the camera positioning; (ii) the eventswere broadcast live‐to‐air; and (iii) the VELO and VUSE branding was intertwined with the ‘othermatter’; appearing on moving vehicles travelling at high speeds.

**Mission Winnow**

As per the ACMA’s findings in Investigation Reports No. BI‐458 and BI‐515, Foxtel maintains the view that the Mission Winnow branding broadcast within the Programs was not a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the TAP Act. Notwithstanding, if the ACMA determines the Mission Winnow branding is now deemed a ‘tobacco advertisement’, then the submissions above are equally applicable with respect to Mission Winnow.

Foxtel therefore submits that any material contained within the Programs that could be considered a ‘tobacco advertisement’ was permitted as it was an incidental accompaniment to the broadcast of other matter.

***(b) Direct or indirect benefit***

We understand that the presence of Mission Winnow, VELO and VUSE branding at the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix* arose from sponsorship relationships between PMI and Ferrari; and BAT and McLaren. Neither Foxtel nor FOX Sports were involved in these relationships.

Furthermore, we can confirm that neither Foxtel nor FOX Sports received any direct or indirect benefit for the broadcast of the Mission Winnow, VELO or VUSE branding on drivers’ vehicles and uniforms at the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix*.

**2.3 Did Foxtel intend to broadcast tobacco advertising?**

If the ACMA determines that the Mission Winnow, VELO and VUSE branding contained within the Program constituted a ‘tobacco advertisement’, we submit that Foxtel did not have the requisite intention to be found in breach of section 13 of the TAP Act.

As noted by the ACMA in Investigation Report No. 2472,[[37]](#footnote-38) the test of intention for a contravention of section 13 of the TAP Act has been stated by the majority of judges (Tracey and Robertson JJ) in *Channel Seven Adelaide Pty Ltd v ACMA* [2014] FCAFC32 to be: that the person broadcasting must be proved not only to intend to broadcast material which falls within the statutory definition of ‘tobacco advertisement’, but also to intend to promote, or give publicity to, smoking or tobacco products.

Foxtel was not the producer of the Programs and was not involved in the sponsorship relationships between PMI and Ferrari or BAT and McLaren. The Programs were broadcast by Foxtel live‐to‐air, which incidentally included fleeting images of the Mission Winnow, VELO and VUSE branding. Given this and the fact that the broadcast did not give publicity to or otherwise promote such branding, Foxtel submits that it could not have held the requisite intention to promote, or give publicity to, smoking or tobacco products by incidentally broadcasting the Mission Winnow, VELO and VUSE branding when it broadcast the *2021 Bahrain Grand Prix* and the *2021 Emilia Romagna Grand Prix*.

**3. Final Comments**

For the reasons set out above, we submit that Foxtel has complied with paragraph 10(1)(a) of Schedule 2 of the BSA:

1. The Programs did not contain a ‘tobacco advertisement’ within the meaning of subsection 9(1) of the TAP Act.

2. Any ‘tobacco advertisement’ was permitted by section 14 of the TAP Act as an incidental accompaniment to other matter, for which Foxtel did not receive any direct or indirect benefit.

3. Foxtel did not contravene the TAP Act because it had no intention to broadcast a ‘tobacco advertisement’ in the Programs.

[…]

Attachment C

Relevant Legislation

**Schedule 2 to the BSA: Standard Conditions**

**10 Conditions applicable to subscription television broadcasting licences**

1. Each subscription television broadcasting licence is subject to the following conditions:
2. The licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act.

[…]

**TAP Act**

**Part 2—Interpretation**

**8 Defined terms**

In this Act, unless the contrary intention appears:

[…]

***smoking*** means smoking tobacco products.

[…]

***tobacco product*** means:

                     (a)  tobacco (in any form); or

                     (b)  any product (for example a cigar or cigarette):

                              (i)  that contains tobacco as its main or a substantial ingredient; and

                             (ii)  that is designed or intended for human consumption or use; and

(iii)  that is not included in the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act 1989; or

                     (c)  a cigarette paper, cigarette roller or pipe.

[…]

**9 Meaning of tobacco advertisement**

*Basic meaning*

1. Subject to this section, for the purposes of this Act, a tobacco advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

(a) smoking; or

(b) the purchase or use of a tobacco product or a range of tobacco products; or

(c) the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* in respect of goods that are or include tobacco products; or

(d) the whole or a part of a design that is registered under the *Designs Act 2003* in relation to products that are or include tobacco products; or

(e) the whole or a part of the name of a person:

(i) who is a manufacturer of tobacco products; and

(ii) whose name appears on, or on the packaging of, some or all of those products; or

(f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).

[…]

**Part 3—Prohibition of tobacco advertisements**

**Division 1—Broadcasting of tobacco advertisements**

**13 Tobacco advertisements not to be broadcast**

1. A person must not broadcast a tobacco advertisement in Australia or Norfolk Island on or after 1 July 1993 otherwise than as permitted by section 14.

[…]

**14 Accidental or incidental broadcast permitted**

A person may broadcast a tobacco advertisement if:

1. the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
2. the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).

The ACMA’s approach to assessing content

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ listener or viewer.

Australian courts have considered an ‘ordinary reasonable’ listener or viewer 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.[[38]](#footnote-39)

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

1. <https://www.foxtel.com.au/watch/f1/2021.html> accessed 13 October 2021 [↑](#footnote-ref-2)
2. <https://www.missionwinnow.com/en/what-is-mission-winnow-/> accessed 11 October 2021 [↑](#footnote-ref-3)
3. <https://www.missionwinnow.com/en/> accessed 20 October 2021 [↑](#footnote-ref-4)
4. <https://search.ipaustralia.gov.au/trademarks/search/view/1975707?q=mission+winnow>, and <https://search.ipaustralia.gov.au/trademarks/search/view/1957810?s=88482f15-2c70-4c6d-a085-415edc483394&p=3> accessed 11 October 2021 [↑](#footnote-ref-5)
5. <https://search.ipaustralia.gov.au/trademarks/search/view/1980884?q=mission+winnow> accessed 20 October 2021 [↑](#footnote-ref-6)
6. <https://tmgns.search.ipaustralia.gov.au/descriptions?class=35> accessed 2 November 2021 [↑](#footnote-ref-7)
7. <https://tmgns.search.ipaustralia.gov.au/?_gl=1%2a10714j1%2a_ga%2aMTI0MjE0OTQ0My4xNjI0NTM4NjMz%2a_ga_QX1TTWEZ1L%2aMTYzNTgyNTMzOS4xLjEuMTYzNTgyNTY3Ny4w> accessed 2 November 2021 [↑](#footnote-ref-8)
8. <https://www.missionwinnow.com/en/pmi/science-and-innovation-at-pmi/> accessed 11 October 2021 [↑](#footnote-ref-9)
9. Mission Winnow and it’s association with Ferrari was publicised at this event <https://www.racefans.net/2018/10/04/ferrari-reveals-new-mission-winnow-f1-livery-japan/> accessed 18 November 2021 [↑](#footnote-ref-10)
10. <https://www.missionwinnow.com/en/legal-pages/frequently-asked-questions/> accessed 2 November 21 [↑](#footnote-ref-11)
11. <https://www.bat.com/abettertomorrow> accessed 20 October 2021 [↑](#footnote-ref-12)
12. <https://vuse.com.au/> accessed 13 October 2021 [↑](#footnote-ref-13)
13. <https://vuse.com.au/collections/pods> accessed 18 October 2021 [↑](#footnote-ref-14)
14. <https://search.ipaustralia.gov.au/trademarks/search/view/1496512?q=1496512> and <https://search.ipaustralia.gov.au/trademarks/search/view/2039568?s=b85275a3-ad69-4de1-ad75-58c3aa8d001a> accessed 18 October 2021 [↑](#footnote-ref-15)
15. <https://search.ipaustralia.gov.au/trademarks/search/view/1899986?s=b85275a3-ad69-4de1-ad75-58c3aa8d001a>; <https://search.ipaustralia.gov.au/trademarks/search/view/2089127?s=b85275a3-ad69-4de1-ad75-58c3aa8d001a>; <https://search.ipaustralia.gov.au/trademarks/search/view/2154918?s=b85275a3-ad69-4de1-ad75-58c3aa8d001a>; [https://search.ipaustralia.gov.au/trademarks/search/view/2061257?s=b85275a3-ad69-4de1-ad75-58c3aa8d001*a*](https://search.ipaustralia.gov.au/trademarks/search/view/2061257?s=b85275a3-ad69-4de1-ad75-58c3aa8d001a) accessed 19 October 2021 [↑](#footnote-ref-16)
16. [https://www.bat.com/abettertomorrow#](https://www.bat.com/abettertomorrow) accessed 19 October 2021 [↑](#footnote-ref-17)
17. <https://www.bat.com/abettertomorrow> accessed 20 October 2021 [↑](#footnote-ref-18)
18. <https://www.velo.com/gb/en/about-velo> accessed 13 October 2021 [↑](#footnote-ref-19)
19. <https://search.ipaustralia.gov.au/trademarks/search/view/2050697?q=2050697> accessed 30 September 2021 [↑](#footnote-ref-20)
20. <https://search.ipaustralia.gov.au/trademarks/search/view/2107738?s=c81f14ce-8412-4be2-92c1-3e8e644fbbff&p=2> accessed 14 October 2021 [↑](#footnote-ref-21)
21. <https://jade.io/article/317852?at.hl=Channel+Seven+Adelaide+Pty+Ltd+v+ACMA+%255B2014%255D+FCAFC+32> at paragraphs 13-14; 18) [↑](#footnote-ref-22)
22. Australian Communications and Media Authority, Investigation Report No. B1‐458 (2019), *Japanese Formula One Grand Prix* broadcast by Foxtel Cable Television Pty Ltd on 7 October 2018. [↑](#footnote-ref-23)
23. Australian Communications and Media Authority, Investigation Report No. B1‐515 (2019), *Monaco Formula One Grand Prix* broadcast by Foxtel Cable Television Pty Ltd on 26 and 27 May 2019. [↑](#footnote-ref-24)
24. <https://www.missionwinnow.com/en/what‐is‐mission‐winnow‐/what‐is‐mission‐winnow‐all‐about‐/> accessed 12 July 2021. [↑](#footnote-ref-25)
25. <https://www.planetf1.com/news/ferrari‐mission‐winnow‐return/> accessed 12 July 2021. [↑](#footnote-ref-26)
26. [https://www.bat.com/abettertomorrow#](https://www.bat.com/abettertomorrow) accessed 12 July 2021. [↑](#footnote-ref-27)
27. <https://search.ipaustralia.gov.au/trademarks/search/view/1980884?q=mission+winnow> accessed 12 July 2021. [↑](#footnote-ref-28)
28. <https://search.ipaustralia.gov.au/trademarks/search/view/1975707?q=mission+winnow> accessed 12 July 2021.\ [↑](#footnote-ref-29)
29. <https://search.ipaustralia.gov.au/trademarks/search/view/2050697?q=2050697> accessed 12 July 2021. [↑](#footnote-ref-30)
30. <https://search.ipaustralia.gov.au/trademarks/search/view/1496512?q=1496512> accessed 12 July 2021. [↑](#footnote-ref-31)
31. Australian Communications and Media Authority, Investigation Report No. 2190 (2009), Getaway broadcast by TCN Channel Nine Pty Ltd on 12 March 2009. [↑](#footnote-ref-32)
32. *Rothmans of Pall Mall (Australia) Ltd v Australian Broadcasting Tribunal* (1985) 58 ALR 675; *Director of Public Prosecutions v United Telecasters Sydney Limited* (1989) 168 CLR 594. [↑](#footnote-ref-33)
33. Australian Communications and Media Authority, Investigation Report No. 3145 (2014), *Motor Mate* broadcast by Channel Seven (Perth) Pty Ltd on 5 November 2013. [↑](#footnote-ref-34)
34. Australian Communications and Media Authority, Investigation Report No. 3145 (2014), *Motor Mate* broadcast by Channel Seven (Perth) Pty Ltd on 5 November 2013. [↑](#footnote-ref-35)
35. Australian Communications and Media Authority, Investigation Report No. 2726 (2011), *Vodafone Test Series – Australia v New Zealand* broadcast by Channel Nine Pty Ltd on 3 December 2011. [↑](#footnote-ref-36)
36. Australian Communications and Media Authority, Investigation Report No. 3145 (2014), *Motor Mate* broadcast by Channel Seven (Perth) Pty Ltd on 5 November 2013. [↑](#footnote-ref-37)
37. Australian Communications and Media Authority, Investigation Report No. 2472 (2014), *Channel Seven News* broadcast by Channel Seven Adelaide Pty Ltd on 18 July 2010. [↑](#footnote-ref-38)
38. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-39)