

Investigation Report no. BI-660

Summary	
Licensee	Western Sports Media Inc
Station	Sport FM 91.3
Callsign	6WSM
Type of service	Community Broadcasting
Relevant legislation	<i>Broadcasting Services Act 1992</i> <ul style="list-style-type: none">> paragraph 9(1)(b) of Schedule 2 [prohibition on advertising]> paragraph 9(3)(b) of Schedule 2 [time limit on sponsorship announcements]
Decision	The Licensee: <ul style="list-style-type: none">> breached paragraph 9(1)(b) of Schedule 2 [prohibition on advertising]> breached paragraph 9(3)(b) of Schedule 2 [time limit on sponsorship announcements]

Background

On 28 January 2023, the Australian Communications and Media Authority (**ACMA**) received a complaint about Western Sports Media Inc (**Licensee**).

The complaint raised allegations that suggested the Licensee is failing to comply with paragraph 9(3)(b) of Schedule 2 to the *Broadcasting Services Act 1992* (**BSA**), which relates to time limits on sponsorship announcements.

On 8 February 2023, the ACMA commenced an investigation under the BSA into the Licensee's compliance with the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA.

On 20 February 2023, as part of the same investigation, the ACMA decided to investigate the Licensee's compliance with the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA, which prohibits advertising.

The Licensee

Since 2 February 2010, the Licensee has held a long-term community radio broadcasting licence to represent the 'Sports with a focus on Local Sport' community interest in the Fremantle RA1 licence area.

The service operated by the Licensee is 'Sport FM 91.3' and its callsign is 6WSM.

The expiry date of the Licensee's current licence is 1 February 2025.

Assessment and submissions

This investigation has considered the following submissions provided to the ACMA:

- > the complaint, received on 28 January 2023
- > copies of the Licensee's broadcasts that were subject of the complaint, received from the Licensee on 17 February 2023
- > written submissions received from the Licensee on 17 February 2023 and 22 March 2023.

Other sources are identified in this report where relevant.

Issue 1: Did the Licensee breach the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising]?

Relevant licence condition

Schedule 2

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 [...]

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

Reasons

The complaint

On 28 January 2023, the ACMA received a complaint about several hours of the Licensee's broadcasts from four days in January 2023.

On 15 February 2023, the ACMA wrote to the Licensee asking for copies of these broadcasts.

Relevant submissions

On 17 February 2023, the Licensee submitted copies of its broadcasts from the days and times requested by the ACMA.

The ACMA reviewed the broadcasts from two out of four days provided. These broadcasts contained the following announcements about businesses (**Business A** and **Business B**) that raised concerns about the Licensee's compliance with the prohibition on advertising:

> on four separate occasions:

'[Business A], the [business] that will [description of business benefits]. The only place in Perth where you'll find [list of products]. Plus, you get [description of benefit of support services]. Head to their website for current stock and brands [...].'

> on one occasion:

'The [new product] is almost here, at Perth's [complimentary description of Business B]. Available in [list of features, options, and benefits]. Contact the team today at [Business B], for all the details on [new product].'

On 22 March 2023, the Licensee indicated that these were intended to be sponsorship announcements. However, it missed including an on-air acknowledgement of this by 'honest mistake'.

Relevant guidelines

The BSA does not provide a definition for an 'advertisement'. 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 any 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'.

- > 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.¹

Subclauses 2(1) and 2(2) of Schedule 2 to the BSA provide for a number of qualifications to the general prohibition on advertising. If one of these qualifications applies, then the relevant material is not taken to be advertisement for the purposes of the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA.

The qualifications apply if the material broadcast meets any of the following descriptions:²

- > accidental ('without being planned') or incidental ('secondary to the subject of the broadcast' and 'a minor part')
- > community information or community promotional material ('provides information about community events or promotes community services')
- > promoting the licensee's community broadcasting service
- > a sponsorship announcement ('contains an acknowledgement of financial or in-kind support by the sponsor of the licensee or a program', such as a 'sponsorship tag' which 'must state the name of the person or organisation that has given support in cash or in kind to the licensee or the program' and should 'be attached to each individual sponsorship announcement').

¹ [Community Broadcasting Sponsorship Guidelines](#), page 3.

² [Community Broadcasting Sponsorship Guidelines](#), pages 9-15

Analysis

The ACMA has considered if the Licensee's announcements about Business A and Business B were advertisements for the purpose of the licence condition at subparagraph 9(1)(b) of Schedule 2 to the BSA.

Business A

Based on the information provided to the ACMA, the Licensee's announcement about Business A was intended to promote the business and bring in custom for its products and services. This is because the announcement:

- > promoted Business A and identified its location
- > drew attention to the range of products that it sells and the benefit of support services that it provides
- > encouraged listeners to 'Head to their website for current stock and brands'.

Further, none of the qualifications to the general prohibition on advertising apply, making it an advertisement.

Business B

Based on the information provided to the ACMA, the Licensee's announcement about Business B was intended to promote the business and bring in custom for its new product. This is because the announcement:

- > promoted Business B, its location, and the new product
- > drew attention to the benefits and features of the new product
- > encouraged listeners to 'Contact the team today at [Business B], for all the details on [new product].'

Further, none of the qualifications to the general prohibition on advertising apply, making it an advertisement.

Conclusion

Based on the broadcasts reviewed by the ACMA, on five occasions in January 2023 the Licensee broadcast advertisements.

Therefore, the ACMA's finding is that the Licensee breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA [prohibition on advertising].

Issue 2: Did the Licensee breach the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements]?

Relevant licence condition

Schedule 2

Part 5 – Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

(3) 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.

Finding

The ACMA's finding is that the Licensee breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA.

Reasons

The complaint

On 28 January 2023, the ACMA received a complaint about the Licensee's broadcasts. The complaint alleged that the Licensee regularly exceeds the 5-minute hourly time limit on sponsorship announcements, and provided examples of times on four days when this occurred.

Relevant submissions

On 17 February 2023, the Licensee submitted copies of its broadcasts from the times subject of the complaint.

The Licensee also submitted that it manually places sponsorship announcements and does not have an 'automated system'.

Relevant guidelines

A sponsor is an individual or organisation that provides payment in cash or in kind to a community broadcasting licensee or a program provided by the licensee.

Licensees may broadcast announcements that promote the activities, events, products, services, or programs of the sponsor, provided that the announcement contains acknowledgement of the financial or in-kind support by the sponsor. For example, by broadcasting a sponsorship tag affixed to the announcement that states they are a sponsor of the licensee.

The ACMA's Community Broadcasting Sponsorship Guidelines set out the ACMA's approach to determining if a licensee has exceeded the 5-minute hourly time limit on sponsorship announcements.³ That is, the ACMA:

- > reviews the content broadcast by the licensee from the start of the hour to the end of the hour
- > calculates the total duration of all sponsorship announcements in that hour of broadcast, inclusive of tags and music.

Analysis

The ACMA reviewed the provided broadcasts from two out of four days to determine if the Licensee exceeded the 5-minute hourly time limit on sponsorship announcements. These broadcasts show the following.

Day 1

- > in the first hour reviewed by the ACMA, the Licensee broadcast 5 minutes and 48 seconds of sponsorship announcements, exceeding the 5-minute hourly time limit.
- > in the second hour reviewed by the ACMA, the Licensee broadcast 5 minutes and 34 seconds of sponsorship announcements, exceeding the 5-minute hourly time limit.

Day 2

- > in the first hour reviewed by the ACMA, the Licensee broadcast 5 minutes and 44 seconds of sponsorship announcements, exceeding the 5-minute hourly time limit.
- > in the second hour reviewed by the ACMA, the Licensee broadcast 6 minutes and 42 seconds of sponsorship announcements, exceeding the 5-minute hourly time limit.

Conclusion

Based on the broadcasts reviewed by the ACMA, on two days in January 2023, the Licensee exceeded the 5-minute hourly time limit on sponsorship announcements on four occasions.

Therefore, the ACMA's finding is that the Licensee breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements].

³ [Community Broadcasting Sponsorship Guidelines](#), page 15.

Agreed actions

In response to this investigation BI-660, the Licensee submitted that it has taken, or will take, actions to mitigate the risk of future breaches, including:

- > training relevant staff
- > emailing all presenters and producers to remind them of obligations related to the time limit on sponsorship announcements
- > taking steps to minimise ambiguity for its participants around what counts towards the 5 minutes of sponsorship announcements allowed per hour, including not mentioning sponsors as part of the licensee's on-air promotions of its community broadcasting service
- > implementing a 'two factor authentication' system, which will involve a second person 'air checking' sponsorship announcements before they are uploaded for broadcast, to ensure that they contain a sponsorship tag.