

Investigation Report no. *BI-686*

| Summary | |
|-----------------------------|---|
| Licensee | Tamworth Broadcasting Society Inc |
| Station | 2YOU |
| Type of service | Community Broadcasting- Radio |
| Date of broadcasts | 9 December 2023 |
| Relevant legislation | <i>Broadcasting Services Act 1992</i> (BSA) Paragraph 9(1)(b) of Schedule 2 [prohibition on broadcasting advertisements]. Paragraph 9(3)(b) of Schedule 2 [time limit for sponsorship announcements] |
| Decision | The Licensee: <ul style="list-style-type: none">> Breached paragraph 9(1)(b) of Schedule 2 [prohibition on broadcasting advertisements].> Breached of paragraph 9(3)(b) of Schedule 2 [time limit for sponsorship announcements] |

Background

In January 2024 the Australian Communications and Media Authority (**ACMA**) received two complaints about Tamworth Broadcasting Society Inc (**Licensee**) (**2YOU**) raising allegations that 2YOU was failing to comply with licence conditions in the *Broadcasting Services Act 1992* (**BSA**).

2YOU has held a long-term community radio broadcasting licence to represent the general geographic community interest in Tamworth RA2 since 16 July 1982. The expiry date of the current licence is 22 June 2027.

On 19 December 2022, the ACMA accepted an Enforceable Undertaking (**EU**) given by 2YOU to the ACMA under section 205W of the BSA. The EU required training of all members and staff of 2YOU on the licence conditions in the BSA, including the advertising and sponsorship conditions.

Specific allegations raised in complaints, received in January 2024, include that:

- > 2YOU breached the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA (prohibition on broadcasting advertisements)
- > 2YOU breached the licence condition at paragraph 9(3)(b) of Schedule 2 to the BSA (time limit for sponsorship announcements).

On 9 February 2024, the ACMA informed 2YOU that it had decided to investigate 2YOU's compliance with the above licence conditions. The ACMA asked 2YOU for specific recordings of content broadcast by 2YOU. On 15 February 2024, 2YOU provided the ACMA with recordings of broadcast material for the following periods:

| Day | Date | Time Slot |
|----------|----------|----------------------|
| Saturday | 09/12/23 | 8.30 am to 9.00 am |
| Saturday | 09/12/23 | 9.00 am to 10.00 am |
| Saturday | 09/12/23 | 10.00 am to 11.00 am |
| Saturday | 09/12/23 | 11.00 am to 12.00 pm |
| Saturday | 09/12/23 | 12.00 pm to 1.00 pm |
| Saturday | 09/12/23 | 1.00 pm to 2.00 pm |
| Tuesday | 09/01/24 | 7.00 am to 8.00 am |
| Tuesday | 16/01/24 | 7.00 am to 8.00 am |

Assessment and submissions

This investigation has considered the:

- > Complaints received by the ACMA on 9 January 2024 and 16 January 2024 (**the Complaints**).
 - The complaints raised concerns about sponsorship and advertising broadcasts by 2YOU.
- > Responses dated 12 February 2024 and 15 February 2024 from 2YOU responding to the ACMA's initial request for information.
- > Letter dated 31 May 2024 from 2YOU and attachments, responding to the ACMA's preliminary investigation report for this investigation.

Other sources are identified in this report where relevant.

Issue 1: Did the Licensee broadcast advertisements?

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 also 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;

Finding

The ACMA is of the view that 2YOU breached the licence condition set out in paragraph 9(1)(b) of Schedule 2 to the BSA by broadcasting advertising announcements on 9 December 2023 promoting:

- a) stock for sale at Company 1 that was broadcast at approximately 8.37am.
- b) produce for sale at Company 2 that were broadcast at approximately 10.32am, 12.17pm and 12.47pm.
- c) products for sale at Company 3 that were broadcast at approximately 12.31pm, 1.18pm, 1.36pm and 1.50pm.

Reasons

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

In determining a licensee's compliance with paragraph 9(1)(b) the ACMA must consider whether:

- > the material broadcast was of an advertising character; and if so
- > if any of the prescribed exceptions to the general prohibition on advertising applied to the material.

Material broadcast of an advertising character

The BSA does not define 'advertisement'. The ACMA considers 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.¹

Exceptions that apply to the general prohibition on advertising

Clause 2 of Schedule 2 to the BSA provides a number of exceptions to the general prohibition on advertising on community broadcasting services. If one of these exceptions applies, then the relevant material is taken not to be advertising for the purposes of the prohibition in paragraph 9(1)(b).

The ACMA's approach to the interpretation and application of these exceptions is set out below.

Material broadcast as an accidental or incidental accompaniment (subclause 2(1))

The exception set out in subclause 2(1) of Schedule 2 to the BSA contains two elements, both of which must be satisfied for the exception to apply. The first element is that the material of an advertising character must have been broadcast as an accidental or incidental accompaniment to the broadcasting of other matter.² The second element is that the licensee did not receive any payment or other valuable consideration for broadcasting the material of an advertising character.³

If the broadcast of the advertising material is deliberate, or due to some arrangement or understanding it would not be 'accidental'. Advertising material may be an 'incidental accompaniment' to the broadcast of other matter only if a reference to a product, service or organisation was secondary to the subject of the broadcast or occurred as a minor part of the broadcast.

Community information material (paragraph 2(2)(a))

Community information material and community promotional material is permitted on community radio and is not taken to be the broadcasting of an advertisement. What constitutes community information material or community promotional material is considered on a case-by-case basis.

The examples provided in the ACMA's Community Broadcasting Sponsorship Guidelines 2008 (**Sponsorship Guidelines**) include 'announcements that can be seen to meet the needs of the community served by the licensee', 'genuine community information material, such as sporting events, community theatre or weather warnings', and 'announcements about goods or services, where the money raised benefits the community, a non-profit group or a community organisation'.⁴

¹ ACMA's Community Broadcasting Sponsorship Guidelines 2008 (**Sponsorship Guidelines**), page 3.

² BSA, paragraph 2(1)(a) of Schedule 2.

³ BSA, paragraph 2(1)(b) of Schedule 2.

⁴ Sponsorship Guidelines, page 9.

The Sponsorship Guidelines say:

It is important to note that announcement about goods or services that charge commercial rates or are sold by an entity with a profit-making purpose are less likely to be community information or community promotional material.⁵

Sponsorship announcements (paragraph 2(2)(b))

Sponsorship announcements that acknowledge financial support of the licensee, or of a program broadcast on the licensee's service, are allowed on community radio and are not taken to be the broadcasting of an advertisement. Generally, the ACMA considers an acknowledgement of a sponsor's financial support ('tag') would:

- > state the name of the person or organisation that has given support in cash or in kind
- > be attached to each individual sponsorship announcement
- > be clearly heard or visible and understood
- > be in the same language as the sponsorship announcement
- > 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.⁶

Promotion of a service provided under the licence (paragraph 2(2)(c))

Material that announces or promotes a service provided under the licence is permitted on community radio and is not taken to be the broadcasting of an advertisement. What constitutes material that announces or promotes a service provided under the licence is considered on a case-by-case basis.

Application of the definition of 'advertising' to the announcements

Material of an advertising character

From the audio recordings provided, the ACMA identified a number of instances where material of an advertising character was broadcast. The ACMA considers the content promoted the products or services of the commercial entities identified in items 1, 2 and 3 below.

Analysis

1. Company 1

Company 1 is located in Tamworth.

The ACMA considered the following broadcast in the recording samples provided:

- 1.1 In the recording provided for the time period 8.30 am to 9.00 am on 9 December 2023 at approximately 8.37am, 2YOU broadcast an announcement about the range of

⁵ Ibid, page 12.

⁶ Ibid, page 14.

'amazing' deals available. The announcement included the website for the commercial entity and other relevant information about the entity.

The material was not broadcast as an accidental or incidental accompaniment to the broadcasting of other matter. It was not community information material. There was no audible sponsorship tag in the recording provided and no acknowledgement of any financial support. The material broadcast was not a promotion of a service provided under the licence.

The ACMA considers the broadcast announcement is generally of an advertising character as it advertises and promotes Company 1 and that none of the exceptions in clause 2 of Schedule 2 to the BSA apply to the material broadcast. Therefore, the ACMA's view is that the Licensee has contravened the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA in relation to the broadcast of this material.

2. Company 2

Company 2 is located in Tamworth NSW.

The ACMA considered the following broadcast announcements made by 2YOU for Company 2 on 9 December 2023:

- 2.1 At approximately 10.33am, the announcer crossed to fellow presenters at Company 2 and discussed the pricing and specials available for specific products. The broadcast announcement generally promoted the products available for purchase at Company 2.
- 2.2 At approximately 11.17am the announcer crossed to a fellow presenter at Company 2 who had a discussion with the owner of Company 2. They discussed the number of people attending "the Saturday specials", the process for ordering for the holiday season, the store's opening hours, and discussed the specific pricing of items.
- 2.3 At approximately 11.46am the announcer crossed to Company 2 and spoke to a fellow presenter, who discussed with a representative of Company 2 the specials and great deals available at Company 2.

For each of the announcements the material was not broadcast as an accidental or incidental accompaniment to the broadcasting of other matter. It was not community information material. There was no audible sponsorship tag in the recording provided and no acknowledgement of any financial support. The material broadcast was not a promotion of a service provided under the licence. Therefore, the announcements do not meet any of the exceptions to the general prohibition on advertising under clause 2 of Schedule 2 to the BSA.

As a result, the ACMA's view is that the Licensee has contravened the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA in relation to the broadcast of this material.

3. Company 3

Company 3 is located in Tamworth.

The ACMA considered the following broadcasts made by 2YOU for Company 3 on 9 December 2023.

- 3.1 At approximately 1.10pm the announcer crossed to Company 3 and broadcast a discussion about the giveaways and discounts available at Company 3. The discussion promoted the products available at Company 3.

- 3.2 At approximately 1.36pm the announcer crossed to the team at the premises of Company 3. During that cross the announcers discussed the vibe down at Company 3 and the gifts and prizes being given away. The broadcast promoted Company 3's Rewards Program and encouraged listeners to join the program providing information about a draw for amazing specials and the incentives associated with joining.
- 3.3 At approximately 1.50pm the announcer crossed to Company 3 and a fellow announcer discussed with the store owner, the specials available and the store's birthday. The broadcast promoted and drew the attention to the products available at Company 3.

The announcements broadcast by 2YOU for Company 3, on 9 December 2023 at approximately 12.31pm, 1.10pm, 1.36pm and 1.50pm, are each considered to be broadcasting of material of advertising character.

For each of the announcements, the material was not broadcast as an accidental or incidental accompaniment to the broadcasting of other matter. It was not community information material. There was no audible sponsorship tag in the recording provided and no acknowledgement of any financial support. The material broadcast was not a promotion of a service provided under the licence. Therefore, the announcements do not meet any of the exceptions to the general prohibition on advertising under clause 2 of Schedule 2 to the BSA.

As a result, the ACMA's view is that the Licensee has contravened the licence condition at paragraph 9(1)(b) of Schedule 2 to the BSA in relation to the broadcast of this material.

Conclusion

Based on the above reasons, the ACMA is of the view that the Licensee has breached paragraph 9(1)(b) of Schedule 2 to the BSA in each of the above broadcasts.

Issue 2: Did the Licensee breach the sponsorship time-limit?

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) in any other case – 5 minutes in any hour of the broadcasting on that service.

Finding

The ACMA is of the view that the Licensee breached the licence condition set out in paragraph 9(3)(b) of Schedule 2 to the BSA on 9 December 2023 between 1.00 pm and 2.00pm.

Reasons

The key feature of a sponsorship announcement is its acknowledgment of the financial or in-kind support given by a sponsor to a community broadcasting licensee, or a program provided under the service. As noted in the Sponsorship Guidelines, the duration of a sponsorship announcement is calculated inclusive of tags and music.⁷

Material to be excluded in calculating the duration of sponsorship announcements

In calculating the duration of sponsorship announcements broadcast in an hour, subclause 9(5) of Schedule 2 to the BSA provides, relevantly, that the ACMA is not to take account of:

- > material that publicises programs to be broadcast by the licensee
- > material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind
- > community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind.

Duration

Based on its assessment of the broadcast material provided by 2YOU, the ACMA calculated the duration of sponsorship announcements in the timeframe 12.00 pm to 1.00 pm on 9 December 2023 exceeded the five minute per hour time limit during that hour.

On 20 May 2024, the ACMA informed the Licensee of its preliminary finding that the ACMA considered the duration of sponsorship announcements had exceeded 5 minutes by 58 seconds.

The licensee responded by letter dated 31 May 2024. The Licensee did not dispute the ACMA's preliminary finding that the Licensee had exceeded the time limit of 5 minutes but noted it had exceeded that time by 54 seconds not 58 seconds.

Conclusion

Based on the above reasons, the ACMA is of the view that the Licensee has breached paragraph 9(3)(b) of Schedule 2 to the BSA as it broadcast sponsorship announcements for a total of more than 5 minutes between 12.00pm and 1.00pm on 9 December 2023.

⁷ Sponsorship Guidelines page 15.