

Investigation Report no. BI-694

Summary	
Licensee	Community Radio Endeavour Warrnambool Inc.
Station	3WAY
Type of service	Community Broadcasting
Relevant legislation	<i>Broadcasting Services Act 1992</i> (BSA) <ul style="list-style-type: none">> Paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements]
Decision	The Licensee: <ul style="list-style-type: none">> Breached Paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements]

Background

On 12 March 2024, the Australian Communications and Media Authority (**ACMA**) received a complaint about Community Radio Endeavour Warrnambool Inc (**Licensee**).

The complaint raises allegations which suggest that the Licensee is failing to comply with licence conditions at paragraph 9(1)(b) [Prohibition of Advertising] and paragraph 9(3)(b) [time limit on sponsorship announcements] of Schedule 2 to the *Broadcasting Services Act 1992* (**BSA**).

Paragraph 9(1)(b) [Prohibition of Advertising] did not warrant further examination because the material of an advertising character broadcast from 9am to 11am on 30 January 2024 (the **program**) acknowledged the financial support by a person of the licensee, in accordance with paragraph 2(2)(b) of Schedule 2 to the BSA, and so is not taken to be the broadcasting of an advertisement.

On 27 June 2024, the ACMA commenced an investigation under the BSA into the Licensee's compliance with:

- > the licence conditions at paragraph 9(3)(b) of Schedule 2 to the BSA [time limit on sponsorship announcements].

The Licensee

The Licensee has held long-term community radio broadcasting licence 5146 to represent the general geographic area community interest in the Warrnambool RA2 licence area since 1990.

The service operated by the Licensee is '3WAY FM 103.7 Great Ocean Radio' (**3WAY**).

The expiry date of the Licensee's current licence is 18 September 2025.

Assessment and submissions

This investigation has considered the:

- > Complaint received by the ACMA on 12 March 2024 (**the Complaint**).
- > A copy of the program was downloaded from the licensee's website on 3 April 2024.
- > A transcript of the program.

Other sources are identified in this report where relevant.

Did the Licensee broadcast more than five minutes of sponsorship announcements per hour?

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 broadcasting on that service.

Preliminary Finding

The ACMA is of the preliminary view that the Licensee broadcast more than 5 minutes of sponsorship announcements in an hour, and accordingly has breached paragraph 9(3)(b) of Schedule 2 to the BSA.

Reasons

Complaint

In summary, the complainant alleged that:

- > On 30 January 2024, the licensee broadcast a program that featured a sponsorship announcement that went over 5 minutes within an hour.

Relevant Information

The ACMA downloaded a copy of the alleged breached recording on 3 April 2024, from the station's website. The copy is available at Attachment A.

Relevant Guidelines

Sponsorship

The ACMA's [Community Broadcasting Sponsorship Guidelines 2008](#) (the **Sponsorship Guidelines**) note that a sponsor is an individual or organisation who provides payment in cash or in kind to a community broadcasting licensee or a program provided under the service. This could be by way of a cash donation or contribution of goods or services that would otherwise be an expense for the licensee in operating the service. 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.

A sponsorship announcement may promote the activities, events, products, services or programs of the sponsor, provided that it contains an acknowledgment of financial or in-kind support by the sponsor of the licensee or a program. As noted in the Sponsorship Guidelines, the duration of a sponsorship announcement is calculated inclusive of tags and music.¹

¹ Sponsorship Guidelines page 15.

Sponsorship tags

A sponsorship 'tag' is a common term that refers to the on-air label affixed to material that enables a licensee to acknowledge support in cash or in kind given by a person or an organisation to a licensee or a program provided under the service.

A tag must state the name of the person or organisation that has given support in cash or in kind to the licensee or the program.

The Act does not restrict the placement of sponsorship announcements for community radio broadcasting licensees. However, where sponsorship is of a particular program, the association between the sponsorship and the program concerned needs to be clear.

Interviews

Interviews with subject matter experts are common to broadcasting and play a legitimate role in community broadcasting. However, care should be taken to ensure that discussions do not move from the general to the specific (for example promotion of a particular product, service or organisation). An interview is more likely to be characterised as an advertisement if the broadcaster has a financial or other arrangement with the expert being interviewed.

Material of an advertising character

The Act does not provide a definition for an 'advertisement'. In investigating complaints, the ACMA has 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'.²

- 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.

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 that the ACMA is not to take account of:

- > material that publicises programs to be broadcast by the licensee

² *Australian Capital Television Pty Ltd and the State of New South Wales v The Commonwealth* (1992) 177 CLR 106 at 166

- > 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.

Analysis

The program was broadcast by the licensee from 9am to 11am on 30 January 2024.

A transcript of the relevant part of the program is at Attachment B.

Interview

The presenter of the program interviewed a representative of Great Value Holidays from 57:36-1:17:00, with a music track playing from 1:03:26 to 1:08:52.

During the interview, the presenter and interviewee discussed a specific travel package that the sponsor had on offer and about the details of the tour. At the end of the sponsorship announcement, the presenter and the interviewee talk about the dates of the tour and about the already sold-out dates, as well as other tours Great Value Holidays has on offer.

As a result, the interview promoted the activities, events, products or services of the sponsor, Great Value Holidays, and did not include any other significant content.

However, staff did not consider that the music track contributed to the material of an advertising character in the relevant part of the program. As a result, the duration of the music track was not included in the calculation of the duration of the sponsorship announcement in this case.

Therefore, the entirety of the interview, less the music track, constitutes a sponsorship announcement.

Duration of sponsorship announcements

In the program, an appropriately tagged sponsorship announcement for Koroit Pharmacy was broadcast at 9:22am for 15 seconds.

The financial support of Great Value Holidays was acknowledged at 9:57am. The presenter and the interviewee proceeded to continue speaking until 10:03am.

As noted in the Participation Guidelines, the ACMA counts the amount of sponsorship material from the beginning to the end of each hour, commencing at the beginning of the hour. In this instance, the host and sponsor talk for 3 minutes and 25 seconds during the first hour of the program. Though there were 2 sponsorship announcements during this hour, the licensee did not broadcast more than 5 minutes of sponsorship announcements between 9am and 10am.

The host continues to speak with the sponsor after a song has played, from 1:08:53 to 1:17:00, amounting to a further 8 minutes and 7 seconds of sponsorship announcement between 10am and 11am.

Another sponsorship announcement, for Cobb & Co, is broadcast at 10:48am and runs for 46 seconds.

None of the exclusions at subclause 9(5) of Schedule 2 to the BSA applies to the material under consideration.

As a result, the licensee broadcast a total of 8 minutes and 53 seconds of sponsorship announcements between 10am and 11am on 30 January 2024.

Agreed actions

The Licensee advised it would take the following in response to the ACMA's preliminary report:

- > The said program "Here Comes the Sun" will be suspended from broadcast until certain conditions are met by the presenter. These are outlined as follows:
 - The presenter will undertake training by the station's appointed trainer and will remain suspended from broadcasting their program until the trainer is satisfied that all "New Presenter" topics have been delivered and understood.
 - A record of topics discussed in this training will be recorded and signed by the presenter as confirmation that they have received this training.
 - The presenter will sign an agreement confirming that they will comply with the code guidelines.
- > The licensee has noted that the station has documented in its minutes the following goals and commitments to ensure that it remains compliant with the BSA:
 - Development of a training syllabus, in conjunction with our appointed trainer, which will include information for all presenters to be able to refer to whenever required.
 - Investigation of programs to enable an "online" course for new presenters, accessible via our website.
 - Development of a training log for all induction and presenter training
 - Development of an induction and training policy
 - Changes to the "New Program" application form, to reflect the sponsorship code guidelines. This form must be signed by the presenter confirming agreement to abide by these guidelines.
 - Emails have been sent to all presenters, as of 5 November 2024, to reinforce the importance of adherence to the code guidelines and have made hard copies available at the station and on its running sheets.

The ACMA notes steps taken by the Licensee to address the breach finding and proposes no further action at this time.