



## Use of classifieds on community radio

### Complaint

The ABA received a complaint relating to the use of classifieds on the community broadcasting service 5YYY, provided by Whyalla Public Broadcasting Inc.

The complainant referred to the requirements under Schedule 2 of the *Broadcasting Services Act 1992* :

- 9(1)(a) Each community broadcasting licence is subject to the following conditions:
- (b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in subclause (3);
- (3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than 4 minutes in any hour of broadcasting.

### The investigation

The main issue for consideration by the ABA in its investigation was how the 5YYY classifieds should be categorised—whether they may be categorised as 'community information material' or 'community promotional material', so that they fall within the scope of Schedule 2 of the Act.

The ABA considered whether the broadcast of classifieds by 5YYY constituted the broadcast of advertisements for the purposes of Schedule 2 of the Act.

The classifieds on 5YYY appeared to be announcements relating to the private sale of second-hand goods, and they were placed by individual members of the community which 5YYY serves.

According to the licensee, the classifieds were not intended to be used by local businesses in lieu of genuine sponsorship announcements.

Schedule 2 also includes:

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

- (a) community information material or community promotional material; or
- (b) a sponsorship announcement that acknowledges financial support by a person of the licensee, whether or not the announcement:
  - (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
  - (ii) promotes activities, events, products, services or programs of the person; or
- (c) material that announces or promotes the service provided under the licence, including material (whether by way of the announcement or promotion of activities, events products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the services provided under the licence; is not taken to be the broadcasting of an advertisement.

### Community information and community promotional material

A broadcast may be categorised as 'community information material or community promotional material' if it can be seen to meet the needs of the community served by the community broadcasting licensee, and if it contains matter that is of direct interest to at least a significant portion of that community. Where the community served by the licensee is defined by reference to a geographic locality, such as the large regional centre in the present example, the broadcast should be able to be categorised as having elements of a 'community service'.

Any assessment of whether or not a broadcast contains community information material or community promotional material depends on the individual circumstances of the case. If the contents of the broadcast are more readily identifiable as being in the nature of an advertisement, rather than

### The codes

Commercial television, commercial and community radio, the ABC and SBS all operate under codes of practice, while other broadcasting sectors are well advanced in the development of their respective codes. The ABA supervises the operation of the codes and performs an independent adjudicator role where complaints are not resolved between the complainant and the broadcaster concerned.

Primary responsibility for compliance with the codes and for resolving complaints rests with the broadcasters. If a station fails to answer a complaint within 60 days, or if the response is unsatisfactory, then the complaint can be referred to the ABA for investigation.

### Investigations

The ABA is required to investigate unresolved complaints and to inform complainants of the results of such investigations.

The ABA can also investigate complaints about the national broadcasters, the ABC and SBS.

The ABA also investigates complaints about matters relating to the standards for children's television or Australian content on television, the standards for subscription broadcasting, subscription narrowcasting and open narrowcasting, and complaints in relation to any type of broadcasting service where the complaint relates to a possible breach of the Act or conditions of licence.

The ABA has a range of sanctions available to it in the event of a breach of a code of practice, program standard or licence condition. Any action taken depends on the seriousness of the breach.

# Investigations

community information material or community promotional material, then the statutory exemption contained in clause 2(2) may not apply.

In this case, the ABA is of the view that the classifieds do not fall within clause 2(2)(a) of Schedule 2 of the Broadcasting Services Act and are not exempted from the prohibition on advertising.

In this context, the ABA is satisfied that the relevant community be defined by reference to the particular geographic area served by 5YYY, particularly those members of the community who reside in the Whyalla region.

The radio classifieds are placed by individual members of the community, rather than commercial traders.

The ABA is of the view that whether the information contained in an advertisement is community information (or community promotional material) or not depends on the content of the advertisement and not the intention of the person who procures the advertisement. It is an objective test which considers whether the broadcast itself provides community information, regardless of the subjective intention of the broadcaster or individual procuring the advertisement.

The content of and the needs met by the classifieds on 5YYY were in no way

different from classifieds broadcast on commercial radio or placed in newspapers. Classifieds are aimed principally at meeting the need of the seller to obtain a purchaser for his wares, regardless of the nature of the goods or whether the seller is a private individual or seeking buyers as part of a profit-making enterprise.

The classifieds on 5YYY would have been broadcast in direct competition with the classified advertising placed on commercial radio or newspapers.

The classifieds were not directed at the community as a community, rather they were more likely to be of interest to the individuals within that community pursuing their individual interest.

ABA is therefore not satisfied that the classifieds constituted 'community information material or community promotional material'.

## Decision

The ABA is of the view that the classifieds referred to by the complainant constitute advertisements as they do not fall within the terms of clause 2(2)(a) of Part 2 of Schedule 2 of the Act.

In addition, they were not sponsorship announcements as they did not contain the relevant sponsorship announcement tag.

Accordingly, the classifieds broadcast by 5YYY were broadcast in breach of clause 9(1)(b) of Schedule 2 of the Act which provides that a licensee will not broadcast advertisements.

## Action taken

This is the first time the ABA has investigated such a matter and therefore sets a precedent for community broadcasters.

The ABA proposes to take no action in relation to the breach because:

- it would be the first occasion in which the licensee has been found in breach of this provision; and
- at the time of the breach the licensee did not have the benefit of the ABA's reasoning in relation to the categorisation of classifieds.

However any further breaches will be viewed most seriously.

In response to the ABA's finding, 5YYY have undertaken that all classifieds broadcast on the station will carry a tag acknowledging the lodger as a supporter of community radio in Whyalla.

The ABA has provided the Community Broadcasting Association of Australia (CBAA) with a copy the ABA's full report on this investigation to assist CBAA members with compliance.

## Sportsworld

### Complaint

BTQ 7, Brisbane, broadcast the sports program 'Sportsworld' containing a segment about the Australian Rugby League (ARL) and the newly formed Super League, on 9 April 1995. As part of the program, there was a press conference concerning the battle for team players between the ARL and Super League. When the conference mediator, Paul Vautin, called an end to the conference a journalist said that he wanted to ask another question, and questioned Mr Vautin's decision to end the conference. Paul Vautin, when questioned, repeated that the conference was ended and called the journalist a 'fat heap of shit'.

The ABA received a letter from the

complainant on 9 June 1995 alleging that the licensee had acted contrary to the FACTS Code. The complainant was concerned that language broadcast during the program was inappropriate.

### Relevant code

Section 2.10 of the code states:

2.10 Material classified 'G' must not contain any matter likely to be unsuitable for children to watch without the supervision of a parent.

2.10.3 *Language:* Mild expletives or language which may be considered socially offensive or discriminatory may only be used in exceptional circumstances when absolutely justified by the story line or program context.

### The licensee's response

BTQ had considered the complaint and decided the action of the mediator had been justified because it was a major sports story which highlighted the tensions spilling over into rugby league's relationship with the media. In addition:

Segments from various interviews during the previous week with players and officials from both sides were included, to illustrate the way in which battle lines were being drawn to in the struggle of each side to gain mastery of the situation.

The press conference demonstrated the considerable ill feeling between the press and those conducting the conference. BTQ stated: