

MIX 106.3 Canberra

Broadcast of election advertisement during the 'blackout' period'

The ABA has found that Canberra FM Radio Pty Ltd, the licensee of commercial radio station 1CBR Canberra (which broadcasts as MIX 106.3), breached the condition of its licence by broadcasting an election advertisement during the 'blackout period'.

On 21 October 2004 the ABA received a complaint regarding an announcement broadcast by MIX 106.3 on Friday 15 October 2004, the day before elections for the Legislative Assembly of the Australian Capital Territory. The announcement in question was authorised by the Association of Parents and Friends of ACT Schools Inc. and commented on the issue of funding for non-government schools. The complainant alleged that the announcement was 'blatant political advertising'.

It is a condition of their licence that broadcasters must not broadcast an election advertisement in relation to an election during the 'relevant period', commonly known as the 'blackout period'. The Broadcasting Services Act defines 'relevant period' as commencing at the end of the Wednesday before polling day and concluding at the close of polling on that polling day. The announcement in question was therefore broadcast during the 'relevant period'.

As the issue of funding for non-government schools was an important issue in the election and as the station received payment for its broadcast the ABA formed the opinion that it was an 'election advertisement' within the meaning of the Act. The ABA therefore determined that the licensee of 1CBR, Canberra FM Radio Pty Ltd, breached the condition of its licence at clause 3A(2) of Schedule 2 to the Act by broadcasting an election advertisement during the relevant period.

The licensee advised the ABA that in response to the investigation finding it

would provide additional training to all staff with decision-making roles in relation to all requirements relating to political advertising. As a result of the steps taken by the licensee to ensure that similar breaches would not occur in the future, and as it was apparent that the broadcast in question was the result of a genuine misunderstanding as to what constitutes 'election matter' within the meaning of the Act, the ABA decided not to take any further action.

Licence condition

Clause 3A(2) of Schedule 2 to the Broadcasting Services Act states:

(2) If:

- (a) a broadcaster has a licence that has a licence area; and
- (b) an election to a Parliament is to be held; and
- (c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;

the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.

The broadcast

The announcement was authorised by the Association of Parents and Friends of ACT Schools Inc., which describes itself as 'The voice of non-government schools in the ACT' and as 'nondenominational and non-party political'.

Complaint

The complainant, in alleging that the broadcast was 'blatant political advertising', stated:

The broadcast related to funding of non government schools in the ACT, and the acknowledgment at the end of the broadcast

was that it was authorised by the Parents and Friends Association. Any Canberran who has watched or listened to the electronic media over the preceding month would be aware of the implication of the material. Even though the Liberal party was not mentioned throughout the broadcast, it may as well have been an advertisement for that party.

I am concerned that any self interest or lobby group, whether sanctioned or funded by the political party or not, could use the blackout period to advertise on behalf of that party. It is almost subliminal advertising.

Assessment

In assessing the broadcast for compliance with clause 3A(2) of Schedule 2 to the Act the ABA determined that:

- the three conditions at paragraphs (a) to (c) of clause 3A(2), under which the clause becomes applicable, were all satisfied and
- the relevant broadcast took place on 15 October, the day before the election. The relevant broadcast therefore took place during the 'relevant period' as defined in Schedule 2 to the Act.

The requirements of clause 3A(2) of Schedule 2 to the Act are therefore applicable to the broadcast in question.

The ABA next determined whether the broadcast could properly be regarded as an 'election advertisement' within the meaning of the Act. For a broadcast to be regarded as an 'election advertisement' it must contain 'election matter that relates to that election' and the broadcaster must receive money or other consideration for its broadcast.

As defined in Schedule 2 to the Act, 'election matter' can mean 'matter commenting on, stating or indicating any of the matters being submitted to the electors at the election'.

The 2003–04 Policy Platform of the ACT Branch of the Australian Labor Party and



a media statement issued by the ACT's Education Minister two days before the broadcast in question both reveal that government funding of non-government schools was an important issue in the election. The issue of non-government schools and their financial relationship with the government can therefore be characterised as a matter 'being submitted to the electors at the election'.

The ABA was of the opinion that the announcement not only drew attention to the issue of government funding of non-government schools but also took a stance regarding this issue. The average listener

would have been left in no doubt that those responsible for the announcement were in favour of such funding. In the opinion of the ABA the announcement both referred to and commented on a matter 'being submitted to the electors at the election', namely the funding of non-government schools.

The ABA also noted that for broadcast matter to be classified as an 'election advertisement' within the meaning of the Act the broadcaster must receive 'money or other consideration' for the broadcast of that matter. In correspondence to the ABA the licensee confirmed that 'the

program matter in question was a paid advertisement within the meaning of the Broadcasting Services Act'. The ABA was of the view that the announcement can be regarded as an 'election advertisement' within the meaning of the Act.

For the above reasons the ABA concluded that the announcement broadcast on 15 October 2004 was an election advertisement that should not have been broadcast during the 'relevant period'. Accordingly, the licensee of 1CBR, Canberra FM Radio Pty Ltd, breached clause 3A(2) of Schedule 2 to the Broadcasting Services Act. ☒

3FOX FM Melbourne : Matt & Jo Show

Presentation of the misuse of alcohol as desirable

The complaint

On 1 July 2004, the the ABA received a complaint that a broadcast on the *Matt & Jo Show* on 3FOX FM on 1 June 2004 had presented the misuse of alcohol as desir-

able. The broadcast concerned a competition involving the consumption of a considerable number of Cosmopolitan cocktails in Las Vegas casinos. The program presenters interviewed the contestant who had consumed the cocktails and described her as 'the hero of this challenge' and congratulated her on her performance.

Decision

The ABA determined that the licensee, Austereo Pty Ltd, breached clause 1.3(c)(i) of the Commercial Radio Codes of Practice 2001, by presenting the misuse of alcohol as desirable in its broadcast of the *Matt & Jo Show* on 3FOX FM on 1 June 2004.

Action taken

The licensee advised that following receipt of the complaint, it had:

- discussed the matter with the program presenters, and was satisfied that there would not be a repetition of the conduct and
- attended meetings with the Australian Drug Foundation, as a result of which 24 announcements for the Community Alcohol Action Network were broadcast on the station in August 2004.

In light of the licensee's action, the ABA decided not to take any further action against the licensee on this occasion, and to continue to monitor the licensee's compliance with the code. ☒

Investigation reports : breach findings

To view the full report on these investigations, go to the ABA web site:
www.aba.gov.au/tv/investigations/breach_findings/ or
www.aba.gov.au/radio/investigations/breach_findings/
 where the reports are arranged according to month of completion.