



Alive 90.5 FM – Your Sound, Your community

9/92 Seven Hills Road, Balcombe Heights Estate, Baulkham Hills 2153

POLICY 9: SPONSORSHIP

SUMMARY OF SPONSORSHIP GUIDELINES FROM ACMA.

3. What constitutes advertising?

The Act does not provide a definition for an ‘advertisement’. In investigating complaints, 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’.¹

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.

4. What types of material do not amount to the broadcasting of advertisements?

The Act permits community licensees to broadcast material that has an advertising character in circumstances where it:

can be regarded as an ‘accidental or incidental accompaniment’ to a broadcast of other matter; and is not paid for, either in cash or in the form of any other kind of valuable consideration.

4.1 What is the accidental or incidental accompaniment exception?

4.1.1 MATTER THAT IS AN ACCIDENTAL ACCOMPANIMENT

There is no definition of the term ‘accidental’ in the Act. In the past, ACMA has used the ordinary meaning of the word.

The *Macquarie Dictionary* (Fourth Edition) defines ‘accidental’ as: accidental: *adjective* happening by chance or accident, or unexpectedly.

Advertising material may be an ‘accidental accompaniment’ to the broadcast of other matter only if it was broadcast by the licensee: by mere chance, or casually, without being planned.

If the broadcast of the advertising material is deliberate, or due to some arrangement or understanding, it would not be ‘accidental’.

¹ *Australian Capital Television Pty Ltd and the State of New South Wales v The Commonwealth* (1992) 177 CLR 106 at 166.

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. This may include a casual reference to a product or service where that type of casual reference is likely to occur in the context of a discussion of some other thing.

Radio example 1

A gardening expert talking to an interviewer and making a passing reference to a particular type of product, in this case Brand X, in the broadcast of a gardening program (that is, the other matter) may be permissible.

[...] You need a high-phosphate fertiliser; otherwise, the tree won't fruit. Brand X is one but there are many others that are just as good and cheaper in price. [...]

Radio example 2

A festival organiser calling in about activities planned (that is, the other matter)—in this case, the Chinese Moon Festival celebrations—making a single passing reference to a commercial organisation—in this case, the Phoenix Cake Shop—may be permissible where it occurs casually and without payment.

[...] The Chinese Moon Festival is on the 15th day of the eighth lunar month. This year, we have planned a poetry competition, there is a lantern-making workshop and of course there is the Sunday parade where the lion dance and fireworks display will be the main features. Money for the purchase of moon cakes this week from the Phoenix Cake Shop will be donated to the festival organiser, the Australian–Chinese Association. [...]

4.2.1 COMMUNITY INFORMATION MATERIAL OR COMMUNITY PROMOTIONAL MATERIAL

Any broadcast that provides information about community events or promotes community services (that is, community service announcements or CSAs) may fall into this category. Usually, licensees receive no payment for the broadcast of this type of material and therefore they do not need to be tagged.² However, if a licensee receives payment in cash or in kind for broadcasting this type of material, the announcement should be tagged and must be included in the hourly sponsorship time limit.

² Please see Part 2.3(b) of the guidelines for an explanation of a sponsorship tag.

Examples of community information material or community promotional material:

- *Material about an appeal by a registered charity, or a non-profit or volunteer group; for example, the Red Cross Blood Appeal, Salvation Army Door Knock Appeal;*
- *announcements that can be seen to meet the needs of the community served by the licensee. For example, a licensee with an ethnic community interest may inform listeners belonging to that particular ethnic group about an upcoming cultural festival or provide information about other events of a cultural, welfare or educational nature;*
- *genuine community information material, such as local 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. For example, a school fete or an announcement promoting a radiothon where the money raised goes to help the victims of a tsunami.*

Discussions with subject matter experts

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 (for example, a DIY program that provides technical information about home improvements) to the specific (for example, the promotion of a particular product, service or organisation). Also, 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.

Example 1

Announcer: Welcome to the Home Show. Today we are discussing the local real estate market and providing useful tips for everyone interested in buying property. We are lucky to have with us George Roy, who has worked in the real estate industry for 25 years and has spent the last 10 years at XYZ Real Estate. George, how is the local market? Is it a good time to buy?

George Roy: It sure is, as long as you do your homework first. It is so important to know the local area and do your research. Check recent sales history, find out what deals you can get with home loans and, if you are an investor, find out what the local rental market is doing. You can do this by checking the local papers and having a look in real estate windows. Or use the web—it is a great tool for home buyers.

Why is this likely to be found to not amount to advertising?

Example 1 establishes George Roy’s credentials (‘We are lucky to have with us George Roy, who has worked in the real estate industry for 25 years and has spent the last 10 years at XYZ Real Estate’) but does not promote him or his real estate agency. The reference to Mr Roy’s employer is contextual—that is, it is a relevant consideration as listeners would want to know whether he is qualified to provide advice. The discussion is about buying property generally and does not focus on individual properties, real estate agencies or a particular real estate agent. The reference to the real estate agency is an incidental accompaniment to the broadcast of other matter.

Example 2

Announcer: Welcome to the Home Show. Today we are discussing the local real estate market and providing you with useful tips if you are interested in buying property. We are lucky to have with us George Roy, from XYZ Real Estate, which is located at 1 Market Street. They are rated number one in the local area and George has recorded the best sales figures for five consecutive years. Be sure to call George on 9876 5432 whether you are buying or selling and he'll be sure to look after you. George, what properties are you going to tell us about this week?

George Roy: Well, good morning to you and your listeners. I have some great homes to talk about this week and I'll give you all the open-day information and viewing times. The first property is at 2 Commercial Street and features ...

Why is this likely to be found to be advertising?

Example 2 promotes both Mr Roy ('... George has recorded the best sales figures for five consecutive years. Be sure to call George on 9876 5432 whether you are buying or selling and he'll be sure to look after you') and the real estate agency ('They are rated number one in the local area'). Further, the segment provides both the address and telephone number for XYZ, promotes the services it provides ('they are rated number one in the local area') and promotes properties for sale by XYZ. These references are not accidental or incidental accompaniment as they are designed to bring attention to XYZ. They are more than merely background to establish Mr Roy's qualifications or expertise.

Gig guides

The broadcast of gig guides is a common feature on community broadcasting services. Licensees often broadcast interviews with music artists and concert performers, including information about upcoming concerts, gigs and performances in the local area—for example, dates, venues, costs and telephone numbers for tickets.

However, care should be taken to ensure that discussions do not move from the general (for example, a review about a CD release) to the specific (for example, the promotion of the CD [product], scheduled concerts [service] or where tickets may be obtained [distributing organisation]).

Example 1

Announcer: So what's happening this weekend? At the Music Hotel on Friday, we have Band A. They are on at 9 pm and the cover charge is \$10. At the Jazz Club on Friday, Band B will be on at 9 pm and Band C at 11 pm. Cover charge \$15. Also on Friday at the RSL will be Band D. They are on at 10 pm and it is free entry.

Why is this likely to be found to be community information?

Example 1 refers to a number of venues and is providing information without promoting any one venue or band. Relevant information is provided to listeners and this information would be covered by the community information exemption.

Example 2

Announcer: So what's happening this weekend? At the Music Hotel we have Band A on Friday night at 9 pm. Cover charge is only \$10. Saturday, the Music Hotel has Band B at 9 pm and Band C at 11

pm. The cover charge for this great event is only \$15. Sunday night, the Music Hotel has a great afternoon of music, starting at 5 pm. No cover charge and happy hour from 6–7 pm.

Why is this likely to be found to be advertising?

Example 2 refers only to one venue and the language used is designed to promote this venue. The primary purpose of this announcement is to promote the venue rather than to provide information to the community.

Example 3

Announcer: Today we are lucky to have with us Robbie, from Band A. Thanks for joining us, Robbie. Now, what have you been up to?

Robbie: Great to be here. We have been really busy, we have a new album out, and we have been out and about promoting it. We are trying to get to as many places as we can and we are really enjoying playing the new songs.

Announcer: Tell us about the album. It seems to be different from your last.

Robbie: We have worked with a new producer and it does have a new sound but we have been getting positive feedback from the fans. We recorded it in LA, which was a new experience for us and we worked with some new songwriters, so I think the album reflects the band being out of its comfort zone and meeting new challenges.

Announcer: Let's have a listen to the new single. [song]

Announcer: That was Band A's new single. Band A is touring to promote its new album—check your local gig guide. We are talking to Robbie from the band. Robbie, tell us a bit about the people you worked with in LA?

Robbie: We worked with ...

Why is this likely to be community information?

The discussion is about Band A's new album and provides listeners with information about the album and the recording process. Reference is also made to the band touring; however, the discussion does not move from providing contextual information (that is, it would be of interest to the audience to know that the band has a new album and that it is touring) to actually promoting or advertising the album or the gigs.

Example 4

This statement is likely to be considered community information:

Musician: We've just finished recording our latest album, A Heavy Winter, available at your local record store.

Whereas this statement is likely to be considered advertising:

Musician: We've just recorded our latest album, A Heavy Winter, which you can buy for \$19.95 from any Vinyl beat record store or from their website at vinylbeat.com.au.

It is important to note that announcements 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.