



specifications referred to in its apparatus licence. Its transmitter power exceeded that specified in the apparatus licence. Its transmitter site differed from that which was specified in the apparatus licence. A breach of a condition of an apparatus licence may be an offence in terms of s.113 of the Radio-

communications Act. The ABA found that 2KKK used the broadcasting service in the commission of an offence against the Radiocommunications Act and thereby breached the condition of its narrowcasting service class licence set out in clause 11(c) of Schedule 2 of the Broadcasting Services Act.

Action taken

As the breach was not significant, was immediately remedied and as 2KKK is now operating in accordance with its technical specifications, the ABA does not intend to take action against the licensee in this particular instance.

Community radio station

2REM-FM

Complaint

On 13 June 1995 the ABA received a letter of complaint that the community radio station, 2REM-FM over a two day period, 30 and 31 May 1995, had breached the *Broadcasting Services Act 1992* in three ways:

- 1 2REM-FM had broadcast advertisements which did not contain acknowledgments recognising sponsorship or sponsorship tags of the station;
- 2 2REM-FM had broadcast advertisements in excess of time limitations as defined under the Act; and
- 3 2REM-FM had not kept the lawfully required recordings of the broadcasts.

Concerns were also raised in the complaint about advertisements that were produced by the nearby commercial station 2AY being broadcast on 2REM-FM, without permission. As this issue concerns copyright and therefore does not fall within the ABA's jurisdiction, the ABA did not assess it.

Relevant legislation

Clause 9 Schedule 2 of the Act prohibits advertisements on community radio:

the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in subclause (3) ...

Clause 2(1) Schedule 2 of the Act provides:

2(1) For the purposes of this Schedule, a person is not taken to broadcast an advertisement if:

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

Tagged sponsorship announcements

are permissible on community radio:

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 broadcast of an advertisement.

Assessment

The ABA found, on assessing tapes provided by the complainant (as no tapes were available from 2REM-FM), that advertising material originally broadcast on radio station 2KY had been re-transmitted on 2REM-FM. In considering the material the ABA took into account clause 2 (2) of Schedule 2, in terms of whether the material could be classified as a community-related promotion, whether financial support was acknowledged, and whether the material promotes a service provided under the licence.

Decision

1: broadcasting of advertisements

The ABA found that between 4 p.m. and 6 p.m. on 30 May 1995 2REM-FM broadcast 15 advertisements that were not 'tagged' in contravention of clause 9(1)(b) of Schedule 2 of the Act. On 31 May, between 7 a.m. and 9 a.m., the station broadcast a further 11 advertisements in breach of the same provision.

2: time limitations

Clause 9(3) Schedule 2 of the Act states: 9(3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than 4 minutes in any hour of broadcasting.

When the transmission time of the advertisement was calculated in the assessment period, the ABA found that 2REM-FM had breached clause 9(3) of Schedule 2 of the Act.

3: logs

The ABA also found that in failing to keep a record of material broadcast on those days 2REM-FM had contravened clause 5(3) of Schedule 2, which requires a broadcaster to retain a record of broadcast.

Action taken

The ABA has required that 2REM remedy the breaches by implementing appropriate procedures to clearly identify sponsorship announcements, and by introducing logging equipment to ensure that records were kept of broadcasts.

The legal requirements relating to sponsorship announcements are now a regular item for discussion at presenters' meetings at the station.