

**Response to the Report on the
Infomercial Inquiry**

**Submission to the
NSW Fair Trading Advisory Council**

by



**Federation of Australian Commercial
Television Stations**

25 September 2002

INTRODUCTION

The Federation of Australian Commercial Television Stations (FACTS) represents Australia's 48 commercial television licensees. FACTS welcomes this opportunity to respond to the *Report on the Infomercial Inquiry to the NSW Fair Trading Advisory Council* released on 2 August 2002 (the Report).

OVERVIEW

- FACTS strongly supports the key recommendation of the Report, that a Working Party develop a self-regulatory scheme for the infomercial industry containing industry-wide measures designed to improve consumer protection. FACTS would welcome participation in the Working Party to help achieve this outcome.
- FACTS notes the Report's statistics showing that the problems arising from infomercials have related to the conduct of a very small number of rogue traders and an extremely low proportion of the total infomercials broadcast. For example, as noted by the Report, more than 96% of complaints received by the NSW Department of Fair Trading related to a single operator who has since received a lifetime ban from trading in NSW. The vast majority of promoters using infomercials are responsible traders who provide informative and convenient methods of purchasing and delivery arrangements for consumers. FACTS believes a self-regulatory scheme administered by the responsible traders within the infomercial industry would effectively guard against future isolated instances of malpractice.
- Infomercials are a long-standing and accepted format on Australian television. FACTS welcomes the Report's acknowledgement that infomercials provide information to viewers about new products and services, with greater scope for demonstration and the provision of more detailed information that is possible in a more time restricted television commercial. FACTS notes the Inquiry's international research involving the UK, USA, Canada and South Africa found that infomercials are also an established program format in all of these comparable countries.
- The Report acknowledges that the broadcast of infomercials is regulated nationally under the *Broadcasting Services Act 1992* and registered codes of practice, with regulatory oversight by the Australian Broadcasting Authority (ABA). The Report's recommendations are appropriately targeted at the conduct of traders, rather than the broadcast of infomercials (with the exception of one recommendation which FACTS does not support as discussed below).
- As FACTS earlier submitted, viewers do not have difficulty distinguishing infomercials from other program content. The Report acknowledges this claim may be correct – and provides no evidence to the contrary – but commented that FACTS did not provide research to demonstrate this claim other than statistics showing an absence of complaints. In this regard the Report fails to give due recognition to the comprehensive and well-publicised complaints processes in place at all television stations, and the large number of calls and letters received each year (with many queries relating to infomercials). FACTS maintains that the absence of complaints from viewers concerning this issue - either to broadcasters or to the Department of Fair Trading itself - does demonstrate convincingly that viewers can readily distinguish infomercials from other programs.

- The Report's proposal for prescriptive on-air disclosure requirements is not warranted. This proposal ignores the existing operation of the *Commercial Television Industry Code of Practice* that requires infomercials to be readily distinguishable, and the range of measures that broadcasters already apply. Moreover, as broadcasting is a national activity, any consideration of disclosure issues should occur in the context of the reviews of the broadcasting codes of practice - which have national application.

RESPONSE TO RECOMMENDATIONS

(1) *The establishment of a Working Party to co-ordinate the development of a self-regulation scheme and to oversee arrangements in the interim period before the scheme is implemented within the industry.*

FACTS strongly supports this recommendation. FACTS would welcome participation on the Working Party. While the development of the self-regulatory scheme needs to be driven by the traders who promote their goods and services in infomercials, FACTS would be pleased to contribute to this process. FACTS looks forward to working with the infomercial industry and government representatives on the Working Party to develop an effective and practical self-regulatory scheme.

FACTS agrees with the Report's view that the development of this self-regulatory scheme in NSW will have national implications. By virtue of the national reach of the commercial networks and subscription television, FACTS believes and expects the scheme will in effect become a 'best practice' model for the infomercial industry across the nation. However, in order for this desirable goal to be achieved, the scheme will need to be flexible enough to accommodate any differences in State and Territory fair trading and consumer protection laws. In this regard, FACTS understands that the NSW Department of Fair Trading is consulting with its State and Territory counterparts in relation to these recommendations. FACTS commends the NSW Department of Fair Trading for taking this leadership role and recommends that the Department continue to liaise with its State and Territory counterparts to inform its work on the Working Party to ensure that the proposed scheme can be applied consistently across Australia.

(2) *The introduction of a self-regulation scheme with a dedicated code of practice, definition for infomercials and disclosure requirements.*

As noted above, FACTS supports the introduction of a self-regulation scheme with a dedicated infomercial code of practice.

Suggested Membership requirements

The Report refers to the role of a Code of Practice in ensuring that promoters and publishers of infomercials do not engage in deceptive advertising and that consumers receive the goods ordered in a timely manner. Although the Report does not discuss in detail the role of broadcasters in a self-regulatory regime, FACTS comments that while broadcasters will be involved in the self regulatory system, they will not be in a position to be responsible for the conduct of traders in complying with their code obligations to consumers. That is, the Code needs to be directed at the conduct of promoters, with the role and responsibility of broadcasters limited to making access to airtime available only to those promoters that commit to the Code . FACTS also supports an industry

complaints mechanism, and will remove from broadcast infomercials which the relevant broadcaster has been advised do not comply with the Infomercials Code.

Definition of infomercial

The Report proposes that the Working Party develop a standard definition of infomercial that can be adopted throughout the industry and incorporated into various codes of practice.

The Report supports the definition provided by FACTS as a 'useful starting point'. That definition reads:

Infomercials are segments either within a program or which may comprise an entire program for which a broadcaster receives payment and which directly promote goods or services which are offered to viewers for sale during the segment or program.

FACTS considers the Working Party should adopt this definition. It encompasses the range of infomercials that have been the subject of this Inquiry. It would not be appropriate to broaden the definition to other programming formats that have not been the subject of this Inquiry and which do not employ direct marketing techniques. FACTS considers the infomercial industry and issues as identified by this Inquiry are distinct. The above definition is sufficiently broad to involve all promoters who are considered to operate in the infomercial industry, and the range of infomercials shown on television.

Disclosure requirements

FACTS opposes the Report's proposal that specific (and prescriptive) on-air disclosure requirements should apply as part of a state-based self-regulatory or legislative scheme. This issue relates directly to the broadcast of infomercials rather than the conduct of traders.

The need for infomercials to be distinguishable from other program matter on commercial television is dealt with under clause 1.13 of the *Commercial Television Industry Code of Practice*. The Report fails to acknowledge the range of measures adopted by broadcasters to give effect to this requirement, such as on-screen supers (subtitles), use of different sets or where the context makes clear to viewers that they are watching an infomercial program or segment.

As set out in FACTS' submission to the Inquiry, there is no evidence that viewers have difficulty in distinguishing infomercials from other program matter. The community concern that exists regarding infomercials relates to the business conduct of a small number of traders, not the broadcast of infomercials. The Report's proposal to introduce prescriptive disclosure requirements is unwarranted.

Furthermore, the proposal would have a direct on-air impact on broadcasting which the Report acknowledges is regulated on a national basis. The appropriate forum for considering the issue of on-air disclosure requirements is the review of the broadcasting industry codes of practice that have been registered with the ABA and are subject to regular review. In this regard, FACTS invites the NSW Department of Fair Trading to participate in the forthcoming review of the *Commercial Television Industry Code of Practice*.

(3) *The introduction of a statutory cooling-off period to provide protection against impulse purchases.*

FACTS has no objection to the principle of a cooling-off period in the interest of consumer protection for television viewers. FACTS queries whether such a consumer protection measure could be part of the proposed infomercial industry code of practice rather than specified in legislation. This is an issue that may be appropriate for the Working Party to consider.

If the Government wishes to enact a legislative cooling off period (or any other legislative measures), FACTS considers such legislation should apply to all direct marketing techniques across all media (including radio, newspapers and magazines and the internet), not just infomercials on television.

(4) *Activation of the provisions under s76 of the Fair Trading Act 1987(if self-regulation is ineffective).*

While FACTS supports this recommendation, we do not consider it will need to be activated as we are confident that the Working Party will succeed in implementing an effective self-regulatory scheme.

(5) *If the industry fails to develop and implement an effective self-regulation scheme within a reasonable timeframe, the Government should consider a range of statutory and regulatory changes to address problems within the infomercial industry.*

As FACTS does not believe the industry will fail to develop and implement an effective self-regulation scheme in a timely manner, we do not consider it necessary to comment on the detail of this recommendation at this point in time.

FACTS recommends that the Government defer consideration of the statutory and regulatory proposals discussed in the Report. FACTS believes it would be premature to make any decisions on possible future changes at this point in time - the self-regulatory scheme should be given a reasonable opportunity to work before further legislative or regulatory changes are considered.

FACTS wishes to place on record the commercial television industry's request that it be consulted on any statutory and regulatory proposals concerning infomercials in the future.

FACTS commends the work of the Fair Trading Advisory Council, and would welcome an opportunity to discuss our response to its Report with the Department of Fair Trading.

25 September 2002