

Decision No. 969 (a)

Reference No. Ind. 8/80

Decision of the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publications: *Pillow Talk*, Vols. 3, 4, 5, and 7, published by Carla Publishing Inc., 208 East 43rd Street, New York, U.S.A.

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Judge W. M. Willis (chairman),
Mesdames L. Edmond, H. B. Dick, L. P. Nikera, and
Mr J. V. B. McLinden.

Hearing: 22 July 1980.

Decision: 15 December 1980.

Appearances: Mr LeLoir for Comptroller of Customs.
M. D. O'Brien for importers, Gordon and Gotch (N.Z.) Ltd.

Decision

These magazines have been submitted by the importers for classification. The magazines sub-titled *The Monthly Journal of Sexual Fulfilment*, contain articles about a great variety of aspects of sex, and a substantial section of letters from readers, some followed by advice on sexual problems. Topics dealt with in the articles include divorce and re-adjustment, sport and sex, guilt, sex and the law, the language of prostitution, sexual fantasies, sex and the church, and methods of contraception. The advice given is sensible and reassuring, obviously of a kind to help people who have real doubts and anxieties about sex. The letters without advice are indulgent at times, but these too are likely to be found helpful and informative for the ignorant or frightened reader.

On behalf of the Comptroller it was submitted that *Pillow Talk* was more restrained in presentation than the magazines *Sexology* and *Forum* which were classified as being indecent in the hands of persons under the age of 18 years of age in decisions 886 and 913. It was further submitted that their availability would not be injurious to the public good. Similar submissions were made on behalf of the importer. The Tribunal gathers the impression from the submissions made, that each would prefer a restriction order rather than having the magazines declared not indecent. In view of the restrictions placed on *Sexology* and *Forum* the Tribunal considers that a similar restriction should be placed on these issues of *Pillow Talk*. They are, therefore, classified as indecent in the hands of persons under the age of 18 years.

Judge W. M. WILLIS, Chairman.

Decision No. 970

Reference No. Ind. 10/80

Decision of the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs in respect of the following publications: *The Fabulous Furry Freak Brothers No. 5; Collected Adventures of the Fabulous Furry Freak Brothers; Further Adventures of Those Fabulous Furry Freak Brothers; A Year Passes Like Nothing With the Fabulous Furry Freak Brothers*, published by Rip Off Press Inc., San Francisco, California.

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Judge W. M. Willis (chairman),
Mesdames L. Edmond, H. B. Dick, L. P. Nikera, and
Mr J. V. B. McLinden.

Hearing: 22 July 1980.

Appearances: Mr P. E. F. M. LeLoir for Comptroller of Customs. Written submissions by Mr J. M. Smyth.

Decision

These are four cartoon comics seized from Mr Smyth at Auckland in January 1980. As he has applied for waiver of forfeiture of the comics, the Customs Department has referred them to the Tribunal for classification.

Book type and length: These publications follow a typical cartoon comic type presentation. They are 18 cm × 26 cm in size and are soft covered and are each approximately 48 pages long. The publishers describe themselves as "publishers of the finest in underground humour and satire, serving a distinguished reading public since 1969".

The comics depict the adventures and life style of three hippies, and their cat. The comics present what is really an anthology of separate comic strips which portray a satirical and often humorous view of the place of the hippie in the American "establishment" society.

Mr LeLoir submitted that the publications fell within what are known as "adult" comics. They were offensive in that they acknowledged an acceptance of drug taking as a normal way of life, that there were episodes of violence and that in many cases the language was crude and offensive.

Further, he submitted that the comics were picture story books and were covered by section 11 (3) of the Indecent Publications Act 1963, and as such these publications were similar to others considered by the Tribunal under that section, (decisions 767-786 of 14 December 1973) and classified as indecent.

Mr Smyth explained that he had purchased the comics in a bookshop in Australia for a friend of his who collected underground comics. He stated that after the publications had been seized he investigated numerous other comics on sale in New Zealand bookshops. He submitted that having regard to the publications which were not classified as indecent, these publications should receive no restriction. His concluding remarks were:

If these comics and the frivolous adventures of their amusingly bizarre characters are to be considered indecent in New Zealand when other comics involving people staggering around with their entrails half ripped out, or their heads severed from their bodies aren't, books involving people voiding their bowels or urinating on each other for fun aren't, magazines featuring close ups of female genitalia and comic strips which have nudity as their only facet of interest aren't, then I think the whole thing is rather silly, and I have no idea what the law is trying to protect me and the other citizens of this country from.

In considering the classification of these comics, the Tribunal accepts the submission by Mr LeLoir that it must have regard to the provisions of section 11 (3) of the Indecent Publications Act which states:

When the Tribunal decides that any picture-story book likely to be read by children is indecent in the hands of children under a specified age, that picture-story books shall be deemed to be indecent in the hands of all persons.

It can be seen from the wording in the above provisions, that before section 11 (3) becomes operative, the Tribunal must be satisfied that the picture story in question is "... likely to be read by children ...". We are unable to reach that conclusion in this case. We think that the content and humour of the publications would be difficult for young readers to comprehend, and we also think that the presentation of the publications would be unattractive to children and accordingly for both reasons, that they would be unlikely to read the publications.

In passing we note that although the provisions of section 11 (3) were set out by the Tribunal in decisions 767-786 of 14 December 1973 (those decisions concerned similar publications and Mr LeLoir in the course of his helpful submissions drew our attention to them), the Tribunal did not specifically discuss the issue of whether any of the publications therein were likely to be read by children, and so the publications in those decisions were considered only on the basis that they were likely to be read by children. As already stated, with the greatest respect to the Tribunal's earlier decisions, the material under consideration in this case is, in our view, unlikely to be read by children.

However, our view is that even if the provisions of section 11 (3) are applied to the present publications, we would not be prepared to declare them indecent.

The provisions of section 11 (3) set out above make it clear that comics are subject to more stringent control than other types of printed matter in that once the material is deemed by the Tribunal to be indecent in the hands of a child, the Tribunal is allowed no discretion to impose even an age restriction classification. In effect therefore, when it comes to picture books likely to be read by children, the standards of the adult community give way to a consideration of the effect the publication may have on a child. Mr Smyth's submission that it was unlikely his friend, who was to receive the comics, would be corrupted by their influence, would therefore be of little significance in determining whether the comics are indecent documents in view of the provisions (assuming they applied) of section 11 (3) of the Indecent Publications Act.

The Tribunal also notes that the provisions of section 11 (3) do not apply when the cartoon or comic strip is published in the context of a paper or magazine, because normally such publications could not be construed as picture story books. The Tribunal wishes to stress the importance of the context in which the cartoon or comic strip is found because of Mr Smyth's submission that in the course of his investigations he was led to believe that the Tribunal had passed, albeit on a restricted basis, cartoons such as *Oh Wicked Wanda* in *Penthouse* magazine, and *Little Anny Fanny* in *Playboy* magazine. Because the publications *Penthouse* and *Playboy*