

Decision No. 12/85
IND 5/85

Before 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 publication:

The Link Catalogue, published by The Link Leatherwear Pty. Ltd.

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, J. V. B. McLinden, R. Barrington, A. J. Graham.

Hearing: At Wellington on the 29th day of March 1985.

Appearances: No appearance by the importer, R. Somerville, K. Wild for Comptroller of Customs.

DECISION

THE Comptroller of Customs advised us that this was a single copy of a private importation seized at Auckland in October 1984. As the importer disputed forfeiture the Customs Department referred the publication to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

The material we are asked to examine consists of some 27 looseleaf A4 sized pages, most of which carry advertisements for accessories used in male homosexual practices. The 27 pages are loose. There have been no holes punched in the paper by which the pages could be bound together nor have they been stapled or affixed to each other in any way. The pages are kept together by means of a cardboard folder which has a pocket running along its bottom inside edge. The pages are stored in this pocket.

The outside of the folder, which is good quality glossy white cardboard has the words *The Link Catalogue* printed on it.

In the context in which this material has been submitted to us, it should be noted that the Tribunal has jurisdiction only over books. It seems to us that the Comptroller is in some difficulty in arguing that this publication is a book, because of its looseleaf nature.

In relation to that point we refer to the material definition of book in *The Shorter Oxford English Dictionary*:

a collection of sheets of paper or other substances, blank, written, or printed, fastened together so as to form a material whole; esp. such a collection fastened together at the back, and protected by covers; also, a literary composition long enough to make one volume, as dist. from a tract, pamphlet, essay etc. . .

As already stated, there is no fastening or binding to keep the pages together in this case. We think in those circumstances that it would be straining the ordinary meaning of *book* to hold that we have jurisdiction to impose a classification.

Recently we had occasion to consider material bearing some similarity to the items the subject of this decision. This was in decision No. 1/85 where the Comptroller sought a decision from the Tribunal in respect (*inter alia*) of 9 mail order forms to Swish Publications Limited. In that case the Comptroller asked the Tribunal to consider the material on the basis that although it was accepted that mail order forms were not specifically included in the definition of books, the Tribunal had been prepared to classify catalogues on previous occasions.

Our conclusion in that case was:

We think that the single page mail order forms could not be classified as books although they obviously may be documents. In that regard we note in passing that *Police v Brian* (1971) NZLR 119 J. Roper held that a book displaying a single page could constitute a document.

It should also be noted that in Decision 1028 we refused to classify a publication called *Spunky 1981 Calendar* as a book for reasons which we feel are also applicable to the present case.

Although we have accepted jurisdiction over numerous sex aid catalogues in the past (e.g. see Decision Nos. 999, 1039 and 1061) they were clearly different in format. In these cases the catalogue pages were bound together so that the publication could be referred to as a book within the ordinary and natural meaning of that word.

For the above reasons we rule that *The Link Catalogue* is a document or collection of documents and not a book, and as such the material is not within our jurisdiction. In circumstances where the items may be considered by the District Court we feel that it is inappropriate to make any comment on whether in our view the material would have been considered indecent if the Tribunal had had the jurisdiction to consider it.

Dated at Wellington this 26th day of July 1985.

Judge R. R. KEARNEY, Chairman.

3

Decision No. 13/85
IND 8/85

Before 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 publication:

J. Brian 1984 Catalog

J. Brian The New Golden Guys No. 6 Published by J. Brian.

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, J. V. B. McLinden, R. Barrington, A. J. Graham.

Hearing: At Wellington on the 11th day of July 1985.

Appearances: No appearance of importer, T. Katavich, K. Wild for Comptroller of Customs.

DECISION

THESE two publications were seized following their commercial importation through the port of Auckland in September 1984 as being indecent. The commercial importer having disputed forfeiture, they have been referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

On behalf of the Comptroller of Customs, Mr Wild submitted that the *J. Brian 1984 Catalog* was a collection of various nude and partly nude male models posing mainly in unnatural positions so as to give maximum emphasis to the male genitals. He pointed out that there were brief descriptive paragraphs about the various models and that the publication was completed with a brief section advertising various sex aids, magazines, and video tapes, mostly of a homosexual nature. The Tribunal is satisfied that this publication is intended to promote homosexual activity of an illegal kind, that there is in any event a coarseness in the pictorial displays and no redeeming features in the publication. For these reasons the Tribunal finds this publication indecent.

The second publication *The New Golden Guys No. 6*, again contains photographs all depicting nude males and the Tribunal agrees with Mr Wild on behalf of the Comptroller of Customs that the poses are, in the main, contrived and that several of them do indeed feature simulated homosexual acts. The Tribunal finds that this publication also clearly promotes homosexual activity of a kind which is illegal and that in addition, there is in any event a coarseness in the display of genitals and no redeeming features to the publication at all.

For these reasons the Tribunal finds this publication indecent.

Dated at Wellington this 26th day of July 1985.

Judge R. R. KEARNEY, Chairman.

3

Decision No. 14/85
IND 3/85

Before 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:

Full Auto Volume Five M1 Carbine To M2 Modification Manual, published by Desert Publications.

Professional Homemade Salutes, by J. Abrusci, published by Desert Publications.

Two Component High Explosive Mixtures, published by Desert Publications.

Submachine Gun Designers Handbook, published by Desert Publications.

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, J. V. B. McLinden, R. Barrington, A. J. Graham.

Hearing: At Wellington on the 29th day of March 1985.

Appearances: No appearance of importer, N. Bell, K. Wild for Comptroller of Customs.

DECISION

THESE publications were imported privately through the port of Mt Maunganui in September 1984 and seized as being indecent. The importer having disputed seizure, the publications were referred to this Tribunal for classification.