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The closing date for receipt of comment is 29 August 1986.

Dated at Wellington this 16th day of May 1986.

DENYS R. M. PINFOLD,

Director, Standards Association of New Zealand.

(S.A. 114/2/8)

Decision No. 6/86
Reference No. 24/85

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:

X Letters Vol. 3 No. 1.

Best of Genesis Friends and Lovers Spring 1986

Buf Pictorial Vol. 18 No. 1

Gem Vol. 27 No. 4

Chairman: Judge R. R. Kearney.

Members: Mrs R. Barrington, A. J. Graham and Ms K. Hulme.

Hearing: Wellington, 25 March 1986.

Appearances: No appearance for importer of *X Letters Vol. No. 1* J. B. M. Smith on behalf of the importer of *Gem* and *Buf* and *Best of Genesis Friends and Lovers Spring 1986* K. Wild for Comptroller of Customs.

DECISION

THESE publications were imported as sample copies through the port of Auckland in November 1985. They were seized by the Comptroller of Customs and the importer has subsequently disputed forfeiture. The publications have been referred to the Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1976.

Mr Smith appeared for the importer in respect of the publications *Gem* and *Buf* and *Best of Genesis Friends and Lovers* and in addition to oral submissions he provided the Tribunal with written submissions in relation to each publication.

The publication *X Letters* is comprised of a collection of letters supposedly written by members of the public and in which they relate their sexual fantasies or experiences. The letters are crude and coarse and cover such subjects as incest, male homosexuality, sado/masochism and anal sex. In the finding of the Tribunal there is nothing of literary merit in the publication and the Tribunal classifies this publication as indecent.

The magazines *Gem* and *Buf* have similar content in most respects. The pictorial concentration in *Gem* is on females with large breasts while that of *Buf* is principally centred on female models with much fuller figures than those usually found in magazines depicting the nude female form. Whilst the Tribunal does not consider that the content would be injurious to adults nor that the content contravenes the tripartite test as set out in decisions 1053 and 1054 of the Tribunal it does note that the publications would seem to cater for a limited interest group whose interest might best be described as being a fetish.

The publishers have gone to some trouble to cover out the genital area of many of the models and such little written material as is contained in the publications is largely unobjectionable. The Tribunal is satisfied that an age restriction is all that is required in respect of the publications *Gem* and *Buf* which are accordingly classified as indecent in the hands of persons under the age of 18. The fourth publication in this series is *Best of Genesis Friends and Lovers Spring 1986* and largely comprises a collection of photographs from the Amateur Erotic Photo Contest which features each month in *Genesis* magazine. Such a contest also features in the magazine *Gallery* under the title *The Girl Next Door*. Both *Genesis* and *Gallery* magazines have previously received R18 restrictions from the Tribunal.

The such small amount of written material contained in this publication although having no literary merit is largely unobjectionable. The Tribunal is satisfied that the magazine does not require an indecent classification but that an age restriction is appropriate and accordingly it classifies this publication as indecent in the hands of persons under the age of 18.

Dated at Wellington this 30th day of April 1986.

Judge R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.

Decision No. 5/86
Reference No. 25/85

Before the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in the matter of a reference from the District Court Auckland for a decision in respect of the following publications:

Cruiser Magazine Vol. 4, Nos. 6, 7 and 8:

Chairman: Judge R. R. Kearney.

Members: Mrs R. Barrington, A. J. Graham and Ms K. Hulme.

Hearing: at Wellington on the 25th day of March 1986.

Appearances: No appearance on the part of the importer The Lawrence Publishing Company (NZ) Ltd. No appearance by the Comptroller of Customs.

DECISION

THESE three magazines are apparently representative copies of a fortnightly magazine printed by Cruiser Publications Inc., Liverpool, Sydney. They are expressed to be on their cover page a "Sydney after dark entertainment guide". These publications first came to the notice of the Comptroller of Customs at Auckland following The Lawrence Publishing Company (NZ) Ltd. the publisher of *Out* magazine importing into New Zealand a single copy of Volume 8 of *Cruiser*. That single copy was seized by a Customs officer on 22 March 1985 on the grounds that the Comptroller of Customs at Auckland had reasonable and probable cause to suspect that it was an item to be forfeited to Her Majesty the Queen pursuant to section 48 of that Customs Act 1966 as being a document within the meaning of the Indecent Publications Act 1963.

The Comptroller of Customs also alleged that the importation of the magazine was prohibited in terms of section 48(1) of the Customs Act 1966 and that such importation was an offence against section 48(7) of that Act. Forfeiture to the Crown was sought by the Comptroller of Customs at Auckland in terms of section 48(11) of the Customs Act 1966.

Notice in respect of an Information In Rem in respect of this magazine was duly given to The Lawrence Publishing Company (NZ) Ltd. and in terms of that notice The Lawrence Publishing Company (NZ) Ltd. filed a statement of defence. The proceedings before the Auckland District Court have the file reference M.A. No. 529/85.

The presiding Judge in respect of the Information In Rem made an order by consent pursuant to section 12 of the Indecent Publications Act 1963 referring the question of the classification of the publication to this Tribunal for decision and report.

When the matter came before the Tribunal there were two additional copies to that originally before the District Court namely Volume 4, Nos. 6 and 7 and the Tribunal has made a determination in respect of all three volumes of the magazine.

As indicated above there were no appearances by either party at the hearing before the Tribunal but the Tribunal received and considered a detailed submission on behalf of the importer signed by Tony Katavich the publisher of *Out* magazine. Mr Katavich's submission strongly urged the Tribunal to find that the publications are not indecent and he also raised certain legal matters which in the outcome the Tribunal finds that it should not deal with.

That submission is to the effect that the publications were seized as "master copies" as distinct from "for sale" copies and as the publisher Mr Katavich did not have those publications for a possible offence against, as he cites it, "(ba) of section 21" they should not be declared indecent by the Tribunal.

Each of the magazines contains a substantial amount of advertising. A significant proportion of that advertising is unobjectionable and of a kind which one would find in a cross section of magazines available in Sydney bookstores. The bulk of the advertising however is clearly directed towards the male homosexual reader and Volume 8 in particular contains quite a significant number of advertisements, most in pictorial form, of what are homosexual sexual activity aids.

Each of the magazines contains a large number of photographs of males many of these being portrayals of a single male but a number showing two or more males in various stages of undress. The bulk of the foregoing material, in the Tribunal's view is not such as would individually or perhaps even collectively justify an indecent classification.

This judgement is expressed in this way because in the end result the Tribunal did not have to give a close consideration to those aspects of the publication for it was unanimous that it was an aspect of the written material in each publication which clearly calls for each of the three volumes to be classified as unconditionally indecent and we so classify those publications.

Each of the volumes which the Tribunal had to consider contain one detailed story of a male homosexual relationship. Not one of the three accounts in these magazines could claim any literary merit and in the recounting of the homosexual activity between the persons