

the violent excesses from Mr Lewis' films. In the Tribunal's clear view the publication is not a serious publication which might otherwise be given a specialist classification such as indecent except in the hands of scholars or persons having a real interest in film production and accordingly the Tribunal classifies the publication as unconditionally indecent.

Dated at Wellington this 31st day of August 1987.

Judge R. R. KEARNEY, Chairman.

Decision No. 15/87

Reference No. IND 25/86

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: *Penthouse Variations for Liberated Lovers*, July 1982, October 1982, December 1982, September 1985, February 1986, *Australian Variations for Liberated Lovers*, *Australian Variations for Liberated Lovers* No. 2 published by Viva International Ltd.; *Couples*, Volume 1, No. 2, published by Couples Incorporated; *Girls of Penthouse*, Collector's Edition, No. 3 published by Penthouse International; *Penthouse Letters* No. 4 published by Penthouse Editorial Services Pty Ltd.; *Genesis Letters Winter 1984*, published by Cycle Guide Publications; *New Direction*, Volume 13, No. 2, published by Gold Star Publications Ltd.; *Velvet*, Volume 9, No. 5 and 9, published by Eton Publishing Company Incorporated; *The Bawdy Beautiful*, published by Sphere Books Incorporated; *Nicole in Flight*, published by Jove Publication Incorporated; *Back Street Sex*, *Pentup Frenzy*, published by Lay Press; *Diana's Debut*, published by Scripts Publications; *The Bedroom Saga of Ned & Elizabeth*, published by Gold Star Publications; *Denise*, published by Emerald Books; *Gina* published by Holloway House Publishing Company; *The Fiesta Letters*, *On the Road by Fiona*, *Suburban Souls*, *The Autobiography of a Flea*, *She Asked For It*, published by W. H. Allen and Company Ltd.; *The Gong Kiss*, published by Canyon Books; *Lucinda*, published by Granada Publishing; *The Butcher Knife Killings*, published by Brandon Books; *Bitter Wine*, published by Midwood Books; *Games*, published by Bucks Books; *Media Madness*, published by Ribald Publications; *Dirk and Honey*, *Diana's Desire*, published by Warner Brothers Ltd.; *Jennifer*, Book No. 2, 5, and 6, published by Dell Publishing Company; *Christina's Touch*, published by Playboy Paperbacks; *Oral Love in Pictures*, published by Bens Books Ltd.:

Chairman: Judge R. R. Kearney.

Members: H. B. Dick, K. A. R. Hulme, R. E. Barrington, and A. J. Graham.

Heard at Wellington on 3 December 1986.

Appearances: P. J. Eggleton for Comptroller of Customs, G. F. Ellis for New Zealand Importers and Distributors of Penthouse Publications. No appearances in respect of other publications. No appearance of Importer Exchange Traders of Dunedin.

DECISION

THE publications in respect of this particular hearing were part of a commercial shipment imported through the port of Dunedin in August 1986. These publications were seized by the Collector of Customs and as the importer had disputed forfeiture the books were submitted to the Tribunal for classification and decision. Mr Eggleton made a brief but general submission in respect of all of the publications on behalf of the Comptroller of Customs suggesting to the Tribunal that the publications were of a tawdry nature and containing material which justified either an age restriction or a classification of unconditionally indecent.

Mr Ellis informed the Tribunal that he appeared for the New Zealand importer and distributor in respect of the various Penthouse publications which had a general interest in the hearing insofar as those publications were concerned. Mr Ellis submitted that although some of the Penthouse publications under consideration contained photographs which breached the tripartite test normally applied by the Tribunal, that that test was no longer relevant following the decision of the Court of Appeal in *Howley v. Lawrence Publishing Company Ltd.* 6 NZAR (1986) 193. Relying on the majority decision of the Court of Appeal Mr Ellis submitted that there was no evidence upon which the Tribunal could act which would satisfy the test that the material in question could cause actual harm to the public good or real potential to cause such harm.

We deal firstly with those publications in which Mr Ellis' client had an interest.

Penthouse Variations for Liberated Lovers, July 1982, October 1982, December 1982, September 1985, February 1986

Each of these magazines contains 147 pages of largely written material. The material is almost entirely, and in some cases is entirely, comprised of sexual subjects, a great deal of the material being presented in a crude and coarse fashion. It is doubtful if anyone could advance for the publications that they had any pretence of literary, artistic or social merit. The fact that the Tribunal found the publications crude, coarse and disgusting is not of itself sufficient to satisfy the statutory test of indecency but throughout each publication can be found photographs depicting heterosexual and lesbian sexual acts of a kind which the Tribunal finds indecent in terms of its previous categorisations under the tripartite test.

The dominant effect of the publications is to present to the reader a diet of sexual fantasy, letters from readers, stories and commentaries on sexual techniques which clearly is designed to cater for the prurient market. The Tribunal is satisfied that the potential for corruption of this type of literature is real and classifies each of these editions of *Penthouse Variations* as unconditionally indecent.

Girls of Penthouse, Collector's Edition, No. 3

This publication is almost exclusively a collection of glossy photographs of female nude or partly nude figures. A significant number of the photographs depict female models in contrived positions so as to highlight the genitalia. That which causes the Tribunal to reach a conclusion that an unconditionally indecent finding is required is the large number of photographs containing couples either female, or male and female engaged in sexual activity. The sexual activity includes oral sex and masturbation. Although the magazine is well produced in terms of the quality of the paper and clarity of photographs, the Tribunal finds that it has no literary, artistic or social merit of the kind which it has to consider under the legislation. As earlier mentioned the Tribunal classifies this publication as unconditionally indecent.

Penthouse Letters, No. 4

This publication is like many others which come before the Tribunal, a collection of alleged readers' letters written to the parent publication Penthouse over a period of time. A great number of adjectives could be used to describe the material such as coarse, crude and lewd but because of the limited market that this material would attract and because most of the material (or similar material) has been published in magazines freely available in New Zealand and principally because the Tribunal is unable to find that the material meets the criteria necessary for an unconditionally indecent classification the Tribunal classifies this particular publication as indecent in the hands of persons under the age of 18 years.

In respect of the remaining publications reviewed in this decision there was no representation of the importer or of any other interested party other than the Comptroller of Customs, nor were there any written representations on the file presented to the Tribunal. These publications can in most cases be conveniently dealt with in groups.

Australian Variations For Liberated Lovers; *Australian Variations for Liberated Lovers*, No. 2

These 2 publications are printed in Hong Kong, largely it seems for distribution in Australia. Each contains 129 pages of largely printed material and each is very similar in its presentation and content with *Penthouse Variations*. *Penthouse Variations* is printed in London and it is significant that the cover graphics for both magazines are identical. For exactly the same reasons as applied in respect of *Penthouse Variations for Liberated Lovers*, the Tribunal finds *Australian Variations for Liberated Lovers* and *Australian Variations for Liberated Lovers* No. 2 unconditionally indecent.

Couples, Volume 1, No. 2

This small publication of 97 pages is a monthly publication published in America. The publication is principally text dealing almost entirely with the prurient aspects of sex in a coarse and crude fashion. That which satisfies the Tribunal that the publication should be given an unconditionally indecent classification is that it contains a number of photographs showing both females, and males and females in sexually intimate poses. The Tribunal is satisfied that this publication has a real likelihood of corrupting persons and certainly has no literary, artistic or social merit nor honesty of purpose and as indicated is classified unconditionally indecent.

Genesis Letters Winter 1984

This is an identical publication to *Penthouse Letters*, No. 4 and for the same reasons is classified indecent in the hands of persons under the age of 18 years.

New Direction, Volume 13, No. 2

A 67-page glossy magazine apparently printed and published in the United Kingdom is principally a presentation of photographs of nude females, the great majority of these photographs are of