

*Appearances:* M. J. Wotherspoon for Comptroller of Customs, G. A. Ireland for importer.

### Decision

The publication *Drummer* is the subject of another decision issued almost simultaneously with this decision in which other volumes were found to be unconditionally indecent.

This particular publication was commercially imported at Auckland in November 1987 and seized by the Collector of Customs. The importer having subsequently disputed forfeiture, the book was referred to the Tribunal prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966. Like the other publications of its kind considered by the Tribunal at its sitting on 11 and 12 April this magazine presents themes of sado-masochism and bondage in both pictorial and written matter. For the same reasons as the Tribunal found in relation to the other *Drummer* publications it classifies this particular publication as unconditionally indecent.

Dated at Wellington this 8th day of July 1988.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.  
go11441

Decision No. 30/88  
Reference No.: IND 31/8

### 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* (US), Vol. 15, No. 3, November 1983; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 15, No. 12, August 1984; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 16, No. 5, January 1985; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 16, No. 8, April 1985; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 16, No. 9, May 1985; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 16, No. 10, June 1985; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 17, No. 4, December 1985; Publisher: Penthouse International Ltd., USA; *Penthouse* (US), Vol. 17, No. 11, July 1985; Publisher: Penthouse International Ltd., USA; *Players Classic*, Vol. 2, No. 11, August 1986; Publisher: Players International Publications, USA; *Learning to Love in Marriage*; Publisher: not known; *Tux*, Vol. 1, No. 1, March 1984; Publisher: Tux Magazine Inc., USA; *Swank* Vol. 33, No. 3, March 1986; Publisher: GCR Publishing Group Inc., USA; *X-Rated Cinema*, Vol. 9, No. 7, December 1985; Publisher: GCR Publishing Group Inc., USA; *Park Lane*, Vol. 1, No. 5; Publisher: not known; *Amazons Special*; Publisher: Tozerward Ltd., UK; *Amazons Special*, No. 7; Publisher: Tozerward Ltd., UK; *Gent's Super Stars*, Vol. 6, 1986; Publisher: Tozerward Ltd., UK; *Fling's D-Cup Contest*, No. 6, 1983; Publisher: Relim Publishing Co. Inc., USA; *Amazons Special*, No. 9; Publisher: Tozerward Ltd., UK; *Hanging Breasts*, No. 1, 1986; Publisher: American Art Enterprises Inc., USA; *50 + Plus*, No. 5; Publisher: not known; *Tip Top*, Vol. 25, No. 1, 1986; Publisher: American Art Enterprises Inc., USA; *Tip Top*, Vol. 25, No. 4, 1987; Publisher: American Art Enterprises Inc., USA; *Backside Babes*, Vol. 1, No. 2, 1986; Publisher: American Art Enterprises Inc., USA; *Wrestling Video Review*, Vol. 1, No. 1, 1986; Publisher: Tao Productions Inc., USA; *Kane Erotica Special*, "The Games People Play"; Publisher: Harrison Marks, UK; *Janus* No. 51, 1986; Publisher: Gatsile Ltd., UK; *Janus*, No. 59, 1987; Publisher: Gatsile Ltd., UK; *Roue*, No. 51; Publisher: Ram Books Ltd., UK; *Michaels Sweet Revenge*; Publisher: Centurian Publications, USA; *Bondage Artwork by Telado*; Publisher: Centurian Publications, USA; *Smooth*; Publisher: Swish

Publications Ltd., UK; *Victorian Erotica*, Vol. 1, No. 10, 1975; Publisher: Ben's Books Ltd., USA; *Club Latexa*, Vol. 2 (1978); Publisher: Centurian, USA; *Centurian's Latex Annual* (1982); Publisher: Centurian Publishing Co., USA; *Transvestite in Bondage*, Vol. 1, No. 5; Publisher: Centurian Publishing Co., USA:

*Chairman:* Judge R. R. Kearney.

*Members:* R. Barrington, A. J. Graham, K. Hulme and S. Middleton.

Hearing at Wellington on the 12th day of April 1988.

*Appearances:* M. J. Wotherspoon for Comptroller of Customs; G. Ellis in respect of publications Penthouse USA and Park Lane. Another appearance on behalf of Importer—Exchange Traders Limited, Dunedin.

### Decision

These publications were commercially imported in October 1987 at Dunedin. The Collector of Customs at Dunedin seized these issues and the importer subsequently disputed forfeiture. The publications were referred to the Tribunal prior to commencement of condemnation proceedings pursuant to the Customs Act 1966. As indicated in another decision of the Tribunal in respect of this particular sitting, Mr Highly of Exchange Traders, the importer, was present on the first day of the Tribunal's sitting but unfortunately was unable to stay for the second day of the sitting. As in the other decision Mr Highly had, in respect of these publications, drawn the Chairman's attention to the fact that many of these publications were freely available in other retail outlets in New Zealand.

### *Penthouse USA*

All of these issues of *Penthouse* are United States editions covering the period November 1983 to July 1986. As the Comptroller of Customs pointed out through Mr Wotherspoon all of these issues contain multiple model scenes depicting the models in acts of intimacy which the Comptroller submitted contravene the 'tripartite test' as set out in Tribunal Decision 1054 of 18 March 1983. Mr Ellis informed the Tribunal that he had a watching brief in respect of these publications on behalf of the United States publications.

An earlier decision of this Tribunal declaring issues of *Penthouse USA* unconditionally indecent was the subject of an appeal to the High Court. This appeal has never been prosecuted and the Tribunal was informed by Mr Ellis that there is little likelihood that in fact the appeal would proceed.

The format in respect of these magazines remains virtually unchanged from that in respect of those publications which were classified as unconditionally indecent and at present stand as an unheard appeal matter. The Tribunal is conscious that the High Court has indicated to the Tribunal that although the 'tripartite test' may still be applied to material by the Tribunal, it does not have the force of law or legislation, nor should such be imported to it.

The magazine, with the exception of the material showing intimacy between the models depicted, is generally of a high standard of production containing a great mixture of material much of it of general interest to readers and not being sexually orientated. The Tribunal discussed this particular publication at some length during the course of its deliberations and it may well be that at some future date, when the matter is fully argued before the Tribunal, some lesser restriction than the unconditionally indecent classification which we now place on it might prove to be justified. In this regard the Tribunal is ever conscious of the fact that other censorship organisations do not adopt such a strict and rigid test of indecency as does this Tribunal. The Tribunal is satisfied, however, that on the information it has before it and on the basis of its previous decisions that there are aspects of this publication which would be injurious to the public good and as indicated classifies each of these particular publications as unconditionally indecent.