

significant number of photographs of a male and female model engaged in sexual activity. Other than the fact that the magazine is obviously of high quality in its photographic and general presentation, it contains none other of the elements which the legislation invites the Tribunal to consider in respect of issuing an age restriction classification, such as literary or artistic merit. The Tribunal is satisfied that this particular issue would be injurious to the public good and classifies it as unconditionally indecent.

Mr Ellis also invited the Tribunal to consider a serial restriction order classification in respect of issues 12, 13 and 14 and he suggested in the event that the Tribunal was not prepared to grant an age restriction classification to issue 15, that that serial restriction order could be issued in terms that it be limited to magazines of a similar size layout and content as issues 12, 13 and 14. Mr Ellis also indicated to the Tribunal that there was some uncertainty as to what format the publishers would use in respect of future issues of this particular publication. The Tribunal is not at this stage prepared to consider the issue of a serial restriction order but it would be prepared to reconsider such an application once the publishers decision has clearly been made as to what future issues of the magazine will contain.

Dated at Wellington this 17th day of November 1989.

R. R. KEARNEY, Chairman.

Indecent Publications Tribunal.
go2650

Decision No. 67/89

Reference No.: 34/89, 42/89, 47/89

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: *Australian Penthouse Black Label Edition*, Vol. 10, No. 6, No. 7, No. 8, No. 9, No. 10:

Chairman: Judge R. R. Kearney.

Members: R. E. Barrington, A. J. Graham and S. C. Middleton.

Hearing at Wellington on the 4th day of October 1989.

Appearances: M. J. Wotherspoon for Comptroller of Customs. No appearance by or on behalf of various importers. G. F. Ellis counsel on behalf of publishers and on behalf of Gordon and Gotch New Zealand Ltd., importers and distributors of *Penthouse New Zealand Edition*.

Decision

These publications were privately imported through parcel post by various importers and were seized by the Collector of Customs. As the importers have 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 1966.

In decision 33/88 of 28 July 1988 the Tribunal issued a serial restriction order in terms of section 15A of the Indecent Publications Act 1963 classifying all Australian edition *Penthouse* publications as indecent in the hands of persons under the age of 18 years. That decision was reached following the consideration by the Tribunal of a number of Australian *Penthouse* publications which the Tribunal determined as having a presentation which was uniform and constant but which all contain material which would clearly be injurious to the younger reader. *The Australian Penthouse Black Label Editions* are sold in New Zealand by mail order from Australia and at the present time there appears to be no intention to have a commercial importation with distribution through retail outlets. The Black Label Editions are almost identical to the standard Australian *Penthouse* magazine which also has a New Zealand edition. The very significant difference in the

publications results from each of the Black Label Editions containing a photographic sequence featuring multiple model scenes, some heterosexual and others of lesbian orientation. Mr Wotherspoon on behalf of the Comptroller of Customs invited the Tribunal to classify the Black Label Editions as unconditionally indecent because of that photographic sequence in each publication of multiple model scenes depicting sexual activity.

Some of the private importers have made written submissions to the Tribunal and the general tenor of those submissions is firstly that the publications are not injurious to the public good and should not be classified as unconditionally indecent and secondly that they are private importations not intended for sale or distribution to other persons.

Mr Ellis on behalf of the publisher acknowledged that there was a significant difference between the Black Label Edition and the standard Australian and New Zealand edition but submitted that that difference was not sufficient to justify the Tribunal in classifying the Black Label Edition as unconditionally indecent. Mr Ellis submitted that there were no other aspects of the publication which offended against the other legs of the tripartite test and that the Tribunal should classify the publication with an age restriction. Mr Ellis also invited the Tribunal to consider the classification of the particular editions on the basis that they were imported by private importation by subscription from Australia. He submitted that such private importation allowed for a stronger content than if distributed through normal retail outlets.

The Tribunal is satisfied that the inclusion of the multiple model scenes in each of these editions takes them past the bench mark which enables an R18 classification in respect of all other *Penthouse* publications from Australia to the point where these publications would be injurious to the public good and classifies each as unconditionally indecent.

Dated at Wellington this 17th day of November 1989.

R. R. KEARNEY, Chairman.

Indecent Publication Tribunal.
go2651

Decision No. 68/89

Reference No.: IND 35/89

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: *Playgirl (Australian)*, Vol. 1, No. 3; *Playgirl (Australian)*, Vol. 1, No. 5; *Playgirl (Australian)*, Vol. 1, No. 7; *Playgirl (Australian)*, Vol. 1, No. 12, Ritter Geller Communications Inc.; *Playgirl (Australian)*, No. 41, The Federal Publishing Co Ltd.; *Adult Fantasy*, Issue 6; *Adult Fantasy*, Vol. 1, No. 11, Goldstar Publications; *The Best of Club International*, No. 15, Paul Raymond Publications Ltd.; *The Best of Fox*, December/January, Vol. 1, No. 5; *Best of Fox*, Winter 1987, Vol. 2, No. 4, Montcalm Publishing Corp.; *Best of Razzle*, Summer Special No. 3; *Escort*, Vol. 4, No. 2; *Escort*, Vol. 4, No. 4; *Escort*, Vol. 4, No. 5; *Escort*, Vol. 4, No. 8; *Escort*, Vol. 5, No. 9; *Escort*, Vol. 8, No. 9; *Escort*, Vol. 8, No. 10; *Escort*, Vol. 8, No. 11; *Escort*, Vol. 8, No. 12; *Escort*, Vol. 8, No. 13; *The Best of Escort*, No. 5; *The Best of Escort*, No. 13; *Paul Raymond's Model Directory*, Vol. 6, No. 2; *Paul Raymond's Model Directory*, Vol. 6, No. 3; *Paul Raymond's Model Directory*, Vol. 6, No. 4; *Paul Raymond's Model Directory*, Vol. 3, No. 3; *Paul Raymond's Model Directory*, Vol. 2, No. 8; *Paul Raymond's Model Directory*, Vol. 3, No. 4; *Paul Raymond's Model Directory*, Vol. 4, No. 3; *Paul Raymond's Model Directory*, Vol. 5, No. 2; *Paul Raymond's Model Directory*, Vol. 5, No. 4; *Paul Raymond's Model Directory*, Vol. 6, No. 1, Paul Raymond Publications Ltd.; *X.S.*, First Issue; *X.S.*, No. 2; *X.S.*, Vol. 2, No. 1; *X.S.*, Vol. 2, No. 2; *X.S.*, Vol. 2, No. 3;