

for a decision in respect of an *ex parte* application pursuant to section 14A of the Indecent Publications Act 1963:

In respect of the following publications: *Penthouse Forum*, Vol. 20, No. 8 (IND 4/91); *Penthouse Forum*, Vol. 20, No. 8 (IND 82/90); *Penthouse Forum*, Vol. 20, No. 10 (IND 6/91); *Penthouse Forum*, Vol. 20, No. 11 (IND 6/91). Publisher: Forum International Ltd.

Decision

In decision 58/90, which was delivered on 24 October 1990, the Tribunal classified *Penthouse Forum*, Vol. 20, No. 20, 5, 6 and 7 as indecent in the hands of persons under the age of 18 years. In the same decision, being satisfied as to the consistency and format of those 3 issues of this serial publication, the Tribunal granted it a restriction order under section 15A of the Act. That decision and order having been notified in the *Gazette* on Thursday, 20 December 1990, the restriction order came into force on Friday, 21 December 1990. In terms of subsection (2) of section 15A of the Act that restriction order, which shall remain in force for a period not exceeding 2 years, shall apply only to those issues of this publication which are published while it is in force.

The subject publications were imported into New Zealand before the restriction order granted in decision 58/90 came into force on 21 December 1990. Clearly, because they were not "published while the order is in force", they cannot be accorded standing thereunder. Therefore the Comptroller of Customs, quite correctly in my view, is of the opinion that the subject publications must be submitted to the Tribunal for a decision as to their classification under the Act. They have been submitted accordingly under section 14 of the Act. Pending their classification following a sitting of the Tribunal, the Comptroller of Customs has asked me to give consideration to the making of an interim restriction order under section 14A of the Act. It is provided in subsection (1) (a) of section 14A of the Act that an *ex parte* application for an interim restriction order in respect of any book may be made to the Tribunal by the Comptroller of Customs in any case where a book has been submitted to the Tribunal in accordance with section 14 of the Act "and the Tribunal has not announced its decision on the book ...". That is the current status of the subject publications. Subsection (4) (a) and (b) of section 14A together provide that every interim restriction order come into force on the day on which it is made and, unless sooner revoked, shall remain in force until expiry of notice or determination of any appeal thereagainst. Given that an interim restriction order shall come into force on the day on which it is made, I am satisfied as to the propriety of this application against the background of its parent restriction order coming into force on the day after the date of its notification in the *Gazette*.

In classifying *Penthouse Forum*, Vol. 20, No. 5, 6 and 7 in decision 58/90 the Tribunal commented that it was:

"... satisfied that there is a consistency of format and content in respect of the publication *Penthouse Forum* of such a kind that it is appropriate that a serial restriction order be granted classifying the publication *Penthouse Forum*, as indecent in the hands of persons under the age of 18 years. Such serial restriction order is made accordingly".

Writing on behalf of the Comptroller of Customs Mr Wotherspoon has expressed the opinion that the subject publications have maintained this consistency of format and content and that they too would appear to warrant a similar classification. On this basis an interim restriction order is made accordingly classifying *Penthouse Forum*, Vol. 20, No. 8, 9, 10 and 11 as indecent in the hands of persons under the age of 18 years.

Dated at Wellington this 27th day of March 1991.

P. J. CARTWRIGHT, Chairperson.

Indecent Publications Tribunal.
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Decision No. 3/91

Reference No.: IND 83/90
IND 4/91
IND 6/91

Ex Parte Application For an Interim Restriction Order

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 an *ex parte* application pursuant to section 14A of the Indecent Publications Act 1963:

In respect of the following publications: XS, Vol. 4, No. 2 (IND 4/91); XS, Vol. 4, No. 3 (IND 6/91); XS, Vol. 4, No. 4 (IND 83/90); XS, Vol. 4, No. 5, (IND 6/91). Publisher: Galaxy Publications Ltd.

Decision

In decision 68/90, which was delivered on 29 November 1990, the Tribunal classified XS, Vol. 3, No. 11 and 12 and Vol. 4, No. 1 as indecent in the hands of persons under the age of 18 years. In the same decision, being satisfied as to the consistency and format of those 4 issues of this serial publication, the Tribunal granted it a restriction order under section 15A of the Act. That decision and order having been notified in the *Gazette* on Thursday, 20 December 1990, the restriction order came into force on Friday, 21 December 1990. In terms of subsection (2) of section 15A of the Act that restriction order, which shall remain in force for a period not exceeding 2 years, shall apply only to those issues of this publication which are published while it is in force.

The subject publications were imported into New Zealand before the restriction order granted in decision 68/90 came into force on 21 December 1990. Clearly, because they were not "published while the order is in force", they cannot be accorded standing thereunder. Therefore the Comptroller of Customs, quite correctly in my view, is of the opinion that the subject publications must be submitted to the Tribunal for a decision as to their classification under the Act. They have been submitted accordingly under section 14 of the Act. Pending their classification following a sitting of the Tribunal, the Comptroller of Customs has asked me to give consideration to the making of an interim restriction order under section 14A of the Act. It is provided in subsection (1) (a) of section 14A of the Act that an *ex parte* application for an interim restriction order in respect of any book may be made to the Tribunal by the Comptroller of Customs in any case where a book has been submitted to the Tribunal in accordance with section 14 of the Act "and the Tribunal has not announced its decision on the book ...". That is the current status of the subject publications. Subsection (4) (a) and (b) of section 14A together provide that every interim restriction order come into force on the day on which it is made and, unless sooner revoked, shall remain in force until expiry of notice or determination of any appeal thereagainst. Given that an interim restriction order shall come into force on the day on which it is made, I am satisfied as to the propriety of this application against the background of its parent restriction order coming into force on the day after the date of its notification in the *Gazette*.

In classifying XS, Vol. 3, No. 11 and 12 and Vol. 4, No. 1 in decision 68/90 the Tribunal commented that it was:

"... satisfied that there is a consistency of format and content in respect of the publication XS of such a kind that it is appropriate that a (sic) serial restriction order be granted classifying it as indecent in the hands of persons