

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

Title of publication: Wicked Camper HZN625

Other known title: Not stated

OFLC ref: 1600236.000

Medium: Vehicle

Maker: The Wicked Cult Limited

Country of origin: New Zealand

Language: English

| | |
|------------------------|---------------|
| Classification: | Unrestricted. |
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Excisions: None

Descriptive Note: None

Display conditions: None

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

The Nature of the Publication:

The material for consideration consists of images and text that appear on the front, the back and on both sides of a campervan designated as *Wicked Camper HZN625*. The campervan is offered for hire by a business known as Wicked Campers, owned by The Wicked Cult Limited.

While the medium - a campervan - has not until recently been examined by the Classification Office it clearly fits the definition of “publication” under s2(c) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act) “a paper or other thing that has printed or impressed upon it, or otherwise shown on it, one or more (or a combination of 1 or more)

images, representations, signs, statements or words ...” The breadth of the definition indicates Parliament’s intention that the scope of the FVPC Act not be limited to films, DVDs, books and magazines. While a campervan’s status as a publication may not be immediately apparent, it meets the s2(c) definition, as do other unusual media previously classified under the FVPC Act.

For instance:

- Apparel: OFLC 800513 – *Vestal Masturbation (Cradle Of Filth T-Shirt)*
- Drink Can – OFLC 1101242 - *Miss Svenson's Classroom Detention*
- Playing Cards: OFLC 9501108 - *Hershe Highway*
- Billboard: OFLC 702680 - *Erotica Lifestyles Expo Billboard*
- Card/Jigsaw Puzzle: OFLC 9601115 – *Colt Puzzle Cards*
- Calendar: OFLC 301472 - *Massive FHM Wall Calendar 2003*
- Street Sign: OFLC 9600069 - *"The New Venus Shop" Sign on Karangahape Rd*
- Packing Box: OFLC 9902226 - *'Just' 17 Love Doll*
- Sticker: OFLC 1400015 – *Panty Dropper*

Submission procedure:

The campervan is one of several submitted for classification on behalf of the Commissioner of Police under s13(1)(ab) of the FVPC Act. The Classification Office received copies of the material for classification in the form of photographs of the front, back and sides of each campervan. *Wicked Camper HZN625* was received on 30 March 2016.

The Classification Office advised the owner of the campervan of the application for classification of the campervan and the right to make written submissions regarding classification. When the owner advised that they did not have access to the campervan under consideration, the Classification Office provided them with copies of the submitted images on 07 April 2016. On 13 April 2016 the Secretary for Internal Affairs, who has an automatic right to make written submissions, was informed of the application for classification. The Commissioner of Police was also advised of the right to make a written submission on that date. The closing date for submissions was 21 April 2016.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Synopsis of written submission(s):

A lengthy written submission regarding several of the campervans submitted for classification was received from the legal representatives for the owner on 21 April 2016. The submission has

been thoroughly considered and is discussed below. Although the New Zealand Police declined to make a submission, they advised that the slogan on the rear of the campervan was their point of concern.

Submission from Ford Sumner Lawyers

The points most relevant to the consideration of the campervan *Wicked Camper HZN625* are to do with the use of humour and sexual content.

In paragraph 51, the submission states that there is “no ‘immoral or mischievous tendency’ identifiable in the content. Rather, the content is a method of light hearted company branding, marketing and artistic expression by staff members, with the commanding influence being humour and popular culture.”

The submission goes on:

Furthermore, individuals are constantly exposed to drug use, sexual references and explicit language on a daily basis in mainstream popular culture across many media. Accordingly, the “average decent minded citizen” would be unaffected by the livery of the vehicles, given the standards in relation to language, drug use and sexual references that are now considered acceptable in modern society.

In paragraph 52, the submission notes that “these accepted societal standards are reflected in the decisions of the Classification Office” and gives examples. These are compared with the “low level explicit language on Wicked’s vehicles [“blow job” is relevant to *Wicked Camper HZN625*]. Wicked submits that these examples “may be considered crass by the ‘average decent minded citizen’ but would not be injurious to the public good.”

The use of humour is dealt with in paragraphs 53 to 57 of the submission. It is stated that “humour through social commentary and satire is the commanding influence, objective intent and prevailing characteristic” of each van. The content is intended to attract attention through the use of “light hearted quotes, provocative sayings and colourful artistic imagery...” The imagery and text are said to be a satirical commentary using references to popular culture and that this humour and satirical intent is:

...clearly demonstrated within the context of the text and images, both individually and collectively, which is also an effective method of marketing, as it attracts and reflects Wicked’s young customer base through its extensive use of popular culture touchstones.

Finally, the submission describes *Wicked Camper HZN625* and explains that “Beatniks” were an artistic and literary movement of the 1940s and 1950s, whose ideas and philosophies laid the foundation for freedom in artistic expression:

The content displayed on this vehicle is intended as social commentary, serving as a reminder that our modern society takes for granted the freedoms that this unique group of individuals fought so hard to obtain.

It is our client’s position that there is no objectionable aspect to the content displayed on this vehicle. The content is neutral, artistically developed and provides social commentary on historic social movements.

At paragraphs 58 to 63 the submission considers the right to freedom of expression contained in the New Zealand Bill of Rights Act 1990 (NZBORA) and whether any limitation on the availability of the campervans would be a reasonable restriction on that right. The submission states “...painting a vehicle with artistic imagery and provocative phrases is no different from an

individual displaying artwork in a gallery...” and that “there is no content on Wicked’s vehicles which would be injurious to the public good in any way or form and no objectionable activity is “promoted or supported” by the content”. A restriction would be an unreasonable limitation on the right to freedom of expression.

Description of the publication:

The images in question on *Wicked Camper HZN625* are superimposed on a background of colourful paintwork, largely in purple and green adorned with various patterns. The front has a large “Peace” symbol on the bonnet. Text on the back window of the van gives contact details.

The left side has a head and shoulders image that appears to be a version of *Mad* magazine’s mascot, Alfred E. Neuman. He wears a turtleneck sweater, heavy spectacles and grins widely. He has a thin moustache and goatee beard. Beside the image is the word “Beatnik” in large green capitals on paintwork that is purple with blue spots.

The right side has an image of a rotund, bearded figure in a red top and purple spectacles. A cigarette in a holder is clenched between his prominent teeth. Text in large yellow letters under the van’s windows reads “Beatnik Bandit”.

Text in white capitals beneath the back window reads, “All I want is peace in the Middle East and a blow job”

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBORA, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBORA states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

The role of the Classification Office is to determine whether the likelihood of injury to the public good (if any) arising from the availability of a publication outweighs the right to freedom of expression and therefore constitutes a reasonable limitation of this right.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with any s3(1) matters in such a manner that the availability of the publication is likely to be injurious to the public good.

Matters such as sex

The text on the back of *Wicked Camper HZN625* is a humorous throwaway line that reads "All I want is peace in the Middle East and a blow job" The term "blow job" is colloquial slang for fellatio. However, "blow job" is not a particularly descriptive term. Although an internet search will inevitably lead to explicit sexual images, it does not imply a degrading sexual act or one that is mainly confined to pornography. Fellatio is just a sexual act involved with pleasure. It is not a controversial or offensive practice, although a conservative minority may not think it normal. In addition, the line is upbeat and light-hearted. It is not a sexist joke: although it does presume a male audience, it does not denigrate women as was the case with the "joke" involving bukkake on *Wicked Camper GCT798*,² recently classified as objectionable. Compared with bukkake, fellatio is relatively common behaviour.

Nevertheless, the inclusion of "blow job" in text on the back of the campervan is not appropriate for children and most people would probably prefer that children not be confronted by it. The issue is further considered under s3A.

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

The Classification Office has considered all of the matters in s3(2), but none are relevant to this publication.

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

² OFLC Ref: 1600234

which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3), but none are relevant to the publication.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm:

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

Parliament's test of "serious harm" under s3A is a high one. It requires the Classification Office to establish firstly that a publication contains "language that is highly offensive to the public in general." The text on the back of the campervan consists of a light-hearted throwaway line aimed at teenage boys and young men. It contains the sexual slang term, "blow job". In public view on the back of a campervan the words are likely to be considered highly offensive by the public in general, although the extent and degree of offence will vary. People with children in a following vehicle are certainly likely to be highly offended by a reference to the sexual practice of fellatio on the campervan.

With the first condition met, the second step requires the identification of serious harm to people under a certain age if the publication is not restricted to persons who have attained that age. Some harm, at least, is likely to young viewers. The use of the term "blow job" is aimed at older teenagers and adults and is not intended for children. Most people would probably prefer that these young viewers were not exposed to it. However, the harm arising from children repeating words such as "blow job" is unlikely to be serious and would warrant only a low restriction. Given the sexual humour children at intermediate school level are exposed to, even a restriction to people who have attained the age of 13 years is arguably unjustifiable, given that this would effectively result in a ban.

Publication may be age-restricted if likely to be injurious to public good for specified reasons:

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

The Classification Office has considered all the matters in s3B(3), but none are relevant to this publication.

Additional matters to be considered:

s3(4)(a) The dominant effect of the publication as a whole.

Colourful paintwork and prominent cartoon images are likely to provide the initial attraction for viewers, especially children and young people. However, teenagers and adults will probably have some inkling that images and text derive from a countercultural context. Reactions to the text on the back of the campervan will vary according to time, location and audience. People in a following vehicle, particularly if it contains children, are probably those most likely to be offended by the use of a sexual slang term for fellatio on the back of a van.

s3(4)(b) The impact of the medium in which the publication is presented.

The material on the campervan is a form of commercial promotion for Wicked Campers and, as such, is designed to be large and to have impact. The text on the back of the van is easily read. By its very nature the medium has the potential to be inadvertently viewed in motion on the road, as well as in car-parks and a variety of off-road situations, including tourist spots, camping grounds and public places where children are likely to view the images. Unlike other portable media (such as DVDs or t-shirts), which allow considerable agency and control over the manner and circumstances of viewing, including access, any problematic parts of the campervan cannot easily be covered, for instance with clothing, or displayed only in restricted areas or to select persons.

s3(4)(c) The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.

The images and text displayed on the campervan have a commercial character, associating the brand with counterculture and humour. According to the submission from the owner's legal representative, the "Beatnik" theme evokes an important historical and social movement.

s3(4)(d) The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

The campervan is specifically intended to be displayed to a wide public audience. The humour is aimed at teenage boys and young adults but is presented to all ages indiscriminately. It is noted that the campervans are not hired to people under the age of 18 years. However, the age of the user(s) has no relevance to the campervan's accessibility to others.

s3(4)(e) The purpose for which the publication is intended to be used.

Images and text on the campervans are a form of commercial promotion designed to create public awareness of Wicked Campers and their brand.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.

No other relevant circumstances are apparent.

Conclusion:

Wicked Camper HZN625 is classified as unrestricted.

In the framework set by the NZBORA, classification decisions must be reasonable and demonstrably justifiable. In this instance, the availability of *Wicked Camper HZN625* is considered unlikely to be injurious to the public good. Light-hearted text on the back of the campervan includes the colloquial slang term “blow job”. The term is neither particularly descriptive nor degrading. It presumes a male audience but is not in any way a sexist joke. The sexual act to which the term refers is common and uncontroversial except to a conservative minority. Nevertheless, the inclusion of “blow job” in text on the back of the campervan is not appropriate for children and most people would probably prefer that children not be confronted by it.

The issue has been considered under s3A, which allows for an age-related restriction. If the sexual term were likely to cause serious harm it would be at a low level. At most the text on the back of the van would warrant a correspondingly low level of restriction. However, the Office finds that because serious harm arising from children or young people accessing the text on the back of the campervan has not been identified, a restriction is not required. To impose a ban or restriction on this campervan would be neither reasonable nor justified.

The Classification Office understands that there may well be many in the community, including parents, who are unhappy with the unrestricted rating of this publication – particularly given the sexual reference prominently displayed on the rear of the campervan.

Classification of publications under the FVPC Act requires balancing injury to the public good with the right to freedom of expression. Lawmakers of the day did not place significant weight on offence as an injury to the public good. This was not an oversight. The threshold for restricting the right to freedom of expression was set at a high level and the powers of the State are focussed on reduction and prevention of harm to avoid unnecessary interference by the State in the lives of New Zealanders.

Reference to the decision of the Office on *Wicked Camper GCT798* enables a better understanding of the difference between harm and offence. The joking sexual reference in that case (to bukkake) serves to normalise a highly degrading, dehumanising and misogynistic sexual practice - causing a real risk of harm to members of the public, including children and young people, who view that reference and are influenced by it. On the other hand, the rear of *Wicked Camper HZN625* contains a commonly-heard colloquial reference to a sexual act that is neither unusual nor controversial.

Nevertheless, the Classification Office acknowledges the high level of public concern in relation to offensive content of the type displayed on this particular campervan. Dealing effectively with content that is offensive, but not otherwise greatly harmful, is far from clear-cut in New Zealand at present. For instance, the Office notes that the campervan appears to breach the Advertising Standards Code of Ethics. In particular, rule 5 which states:

Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

Advertising standards, however, are administered voluntarily by industry and there is no force of law to ensure the maintenance of those standards.

Date: 07 June 2016

For the Classification Office (signed):

Note:

You may apply to have this publication reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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