

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

Title of publication: Wicked Camper JKC403

Other known title: Not stated

OFLC ref: 1600281.000

Medium: Vehicle

Maker: The Wicked Cult Limited

Country of origin: New Zealand

Language: English

Classification: Objectionable.

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 JKC403*. The campervan is offered for hire by a business known as Wicked Campers, owned by The Wicked Cult Limited. Content includes two large depictions of the Disney character “Goofy” engaging in illegal drug use and the text ‘Stoned’.

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 mediums 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. On 18 April 2016 the Classification Office received copies of the publication for classification in the form of photographs of the front, the back and both sides of the campervan.

On 09 May 2016 the Classification Office provided the owner of the campervan with copies of the submitted images and advised them of the right to make written submissions on its classification. The Secretary for Internal Affairs, who has an automatic right to make written submissions, was also notified of the application for classification. The Commissioner of Police was also advised of the right to make written submissions. The closing date for submissions was 24 May 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):

On 24 May 2016 an email was received from Ford Sumner Lawyers advising that their client did not intend to make a written submission specific to this campervan, and that the earlier submissions, dated 21 April 2016, should also apply to this vehicle, with “any necessary amendments and modifications that are appropriate.”

Synopsis of Submission from Ford Sumner Lawyers

Of the points made in the written submission dated 21 April 2016, the most relevant to the consideration of the campervan which is the subject of this decision are the use of humour and the references to drugs. With regard to publications that deal with drug use, in paragraph 52.3 the submission refers to other decisions of the Classification Office that “display and promote frequent drug use” where the publications were given an unrestricted classification.

The submission considers that only a few items depicted on the Wicked campervans submitted to the Classification Office to date may be interpreted as relating to drug use, such as the depictions of and text reference to a “bong” and a “doobie”. The submission states that the small amount of content relating to drug use means “the overall dominant effect as a whole is certainly not promoting drug use”.

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 campervan. 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 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.

A campervan associating the children’s cartoon characters Shaggy and Scooby-Doo with the use of illegal drugs was dealt with in the submission of 21 April. The submission’s discussion of that campervan is of relevance to the vehicle currently under consideration. The submission notes that the content was intended as a popular culture parody. Paragraph 103 states “It is not foreseeable that the phrases and imagery as a whole will be offensive to any groups in society. Scooby Doo is a children’s cartoon that is unrestricted. In any event, displaying drug use is insufficient to justify any restriction on the content...”

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 campervan 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 campervans 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.

Synopsis of Submission from New Zealand Police

The written submission dated 13 May 2016 from the New Zealand Police states, in relation to the problematic text and images on *Wicked Camper JKC403*:

The left side of the vehicle depicts an image of a well-known Disney cartoon character *Goofy* licking a piece of paper that he is holding with both hands, this indicates that he is rolling a tobacco or cannabis cigarette. The word “Stoned!” is written in large red letters across the side of the vehicle.

The right hand side of the vehicle depicts another image of Goofy wearing a Pink Floyd singlet [and] holding a cannabis bong and smoke is being emitted from the top of the bong. The word “stoned” is written in large green and yellow letters across the side of the vehicle.

The phrase “Stoned” is the commonly known reference to someone under the influence of cannabis and users will generally smoke the cannabis in a cannabis cigarette or a “joint” where cannabis is rolled and smoked in rolling paper. Users also commonly smoke cannabis through the use of a cannabis bong.

The image on the right hand side of *Wicked Camper JKC403* clearly depicts the cartoon character *Goofy* in possession of a cannabis utensil (a bong) which he is using to smoke cannabis. The word “Stoned” confirms that Goofy is under the influence of cannabis as does the depiction of the character with his eyes half closed (a well-known side effect of cannabis consumption).

The image on the left hand side of *Wicked Camper JKC403* clearly depicts *Goofy* rolling a cannabis joint and the word “Stoned” confirms that he is (or is about to be) under the influence of cannabis.

The NZ Police submit that this content results in the campervan promoting and supporting the use of illegal drugs.

The submission goes on to discuss the vehicle, taking into account the various criteria under s3(4) of the FVPC Act (the dominant effect, impact of the medium, intended audience and any merit, value or importance the publication may have):

The publication is presented on a large vehicle that is available for rent and is predominantly hired by overseas tourists who intend to travel around New Zealand on a limited budget, commonly referred to as “backpackers”. As such the publication is generally seen on roads, highways, public parks, beaches, tourist attractions, and other such public places; as those who use these types of vehicles tend to travel long distances all throughout New Zealand.

The Police submit that there is very little (if any) merit, value or importance to the publication in terms of literacy, artistic, social, cultural, educational, scientific, or other matters. The publication is shock value advertising that is designed to generate publicity (positive or negative) and freedom of expression arguments under s14 of the New Zealand Bill of Rights Act (the “NZBORA”) are lessened by s5 of the [NZBORA] when the expression is purely for commercial purposes.

The slogans and artwork attempt to be witty and often contain sexual undertones and messages that are likely to be popular with men aged between 18 and 30 years old. However, *Wicked Camper JKC403* has been seen all throughout the southern parts of New Zealand.... *Wicked Camper JKC403* depicts images of Goofy (an easily identifiable and popular cartoon character) and, as such, will naturally attract the attention of children and young people.

The submission discusses how the vehicle promotes criminal acts:

It is the Police submission that *Wicked Camper JKC403* is an objectionable publication as it depicts the criminal act of illegal drug use in a manner that promotes the use of cannabis in circumstances that are likely to appeal to children and young people. The publication is injurious to the public good as it promotes criminal acts and is likely to attract the attention of children and young people through the use of well-known cartoon characters ... *Wicked Camper JKC403* tends to promote and support the use of illegal drugs in children and young persons through depiction of the drug use by a popular and easily identifiable

cartoon character ... The purpose or intent of the Wicked Cult Limited may not necessarily be to promote the use of such drugs, but the manner in which the images have been created, the locations in which the image [sic] will be seen, the depiction of popular cartoon characters involved in drug use, and the bright colouring of the images all lead to the conclusion that criminal acts are promoted or encouraged (particularly in children and young persons) by the publication.

The Police submissions conclude that *Wicked Camper JKC403* should be classified as objectionable or at the very least be age restricted to protect children and young persons.

Description of the publication:

The images in question on *Wicked Camper JKC403* are superimposed on a background of colourful paintwork, mainly in orange and purple. The front has a large peace symbol centred over the number plate. The back window has contact details for Wicked Campers.

The right side features an image of the head and upper body of the Disney character "Goofy", wearing a green hat and a red singlet top printed with the name "Pink Floyd". The character holds a bong to his mouth, with purple smoke appearing to issue from it. His expression suggests intoxication. Under the window large green letters outlined in yellow read "Stoned!"

The left side shows the "Goofy" character differently dressed. He is shown holding and licking cigarette papers in the process of rolling a cigarette or joint. Under the windows large red capitals read "Stoned!"

White capitals on the back of the van read "Everybody is somebody else's weirdo".

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 crime

The campervan *Wicked Camper JKC403* displays images and text that show or refer to the use of substances that are illegal in New Zealand. On one side of the van a cartoon character appears to be using a bong, a utensil associated mainly with cannabis use, and his expression shows the pleasurable effects of the drug. On the other, the character licks papers that are used to roll cigarettes for smoking tobacco or cannabis. Both images of the character are accompanied by the prominent word "Stoned!" The word is usually understood to indicate the effects of cannabis use and it would seem that the use of the word in conjunction with the images removes any doubt as to the intended meaning of those images. The schedule to the Misuse of Drugs Act 1975 lists cannabis as a Class C drug and bongs are also illegal under that Act.

The Classification Office acknowledges the point made in the submission from Ford Sumner Lawyers that other publications depicting drug use have been given unrestricted classifications. Both of the examples cited (Episode 7 of the *UnREAL* television series and disc 2 of *American Gangster*) are in mediums over which substantial control of access can be exercised by parents or the individual. People who do not wish to be exposed to drug use are warned upfront by the descriptive note attached to a publication and can choose not to be exposed to the content, or that their children not be exposed to the content. The drug use in both of the examples cited is relatively fleeting in the context of both publications.

The question of whether the campervan promotes or encourages criminal acts is considered under s3(3)(d).

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.

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

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 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). The matter relevant to the publication is:

s3(3)(d) The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.

The campervan *Wicked Camper JKC403* promotes and encourages criminal acts. It is specifically intended to be displayed to a wide public audience. When in use where the images and text it carries can be seen, it has the effect of promoting the use of illegal drugs, most obviously cannabis, as normal and acceptable. It also encourages the use of cannabis, particularly by young people vulnerable to the messages conveyed.

The images and text on the campervan use a well-known Disney cartoon character to present drug use in a subversive manner that is oriented towards young adult consumers. The Classification Office acknowledges that the material on the campervan has a somewhat humorous intent. However, the size and colourful nature of the imagery on the van will inevitably draw the attention of children and young teenagers who are likely to focus on a familiar character and accept the humorous presentation of drug use uncritically. The association of drug use with a popular Disney character is likely to encourage impressionable younger members of the public to see drug use as funny and “cool”. Adding to this kind of impact is the use of the slang term “Stoned!” which appears to celebrate the effects of cannabis use. Drug use openly displayed in public is likely to play a role in the formation of attitudes to illegal substances that would negatively influence the behaviour of young people as they grow older.

Older teenagers and young adults (who are presumably the target audience) are less likely to be influenced by seeing a cartoon character engaged in using a bong (or rolling a joint). People in this age group are more likely to appreciate the socially transgressive nature of the material than older adults. However, by the age of 16 years, teenagers will be well aware that to use drugs such as cannabis breaks the law and entails consequences that are likely to negatively impact on their futures.

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.

The publication does not contain any highly offensive language.

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). The relevant matter is:

s3B(3)(a)(ii) material that describes, depicts, expresses, or otherwise deals with conduct that, if imitated, would pose a real risk of serious harm to self or others or both;

Unless restricted to persons 16 years of age and over, the material on the campervan is likely to be injurious to the public good because the general levels of emotional and intellectual development and maturity of persons under that age mean that the availability of the material to those persons would increase significantly the risk of them causing serious harm to themselves, others, or both.

Drug use of the sort promoted by the campervan would have serious short and long term harmful impacts on the psychological and physical health of children. The harm would be attitudinal more than in direct imitation of the behaviour, but the use of a popular cartoon character does increase the likelihood of uptake of the depicted attitudes and behaviours by children and young people. The messages on the campervan normalise the use of drugs and drug paraphernalia and associates such use with pleasure, fun and the freedom to live without constraint. This is likely to result in serious harm to children and young teenagers in particular, because their emotional and intellectual development makes them more impressionable and less able to understand risk and consequences. Messages that legitimise and encourage drug use increase the risk of the young causing serious harm to themselves and those around them, particularly in the long term.

Additional matters to be considered:

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

The images and text on the campervan are large, brightly-coloured and eye-catching – a magnet for the attention of young viewers in particular. First impressions may pick up on the somewhat ingenuous humour produced by the use of a Disney cartoon character. However, images of the character using and enjoying cannabis, along with obvious references to the effects of drug use in text, are unlikely to be overlooked. These are large images that occupy a high proportion of the surface area of the campervan and they reinforce each other to produce an overall drug use theme.

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

The medium used to display the material removes agency and control over access from the viewer. The imagery 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 campervan is specifically intended to be displayed to a wide public audience. 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) the 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 on the campervan subvert a well-known cartoon character for a commercial purpose by associating something childish, popular and innocent with adult behaviour involving drugs and hedonism. The images and text have the characteristics of graffiti art, but there is no real attempt at producing material with merit in this respect. They are a commercial appropriation of a graffiti “look” that would alienate many actual graffiti artists, and they are not executed with any real skill or attempt at expression in art terms. The campervan has no particular merit, value or importance in any of the above terms.

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 material is aimed at 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 campervan 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 JKC403 is classified as Objectionable.

In the framework set by the NZBORA classification decisions must be reasonable and demonstrably justifiable. Freedom of expression entails a certain tolerance for the depiction of drug use in various media. Films or DVDs, for instance, allow a high level of control over the manner and circumstances of viewing, including access. This same agency and control is not available when the medium is a campervan designed specifically for public display as a business promotion.

The imagery and text on the campervan are expressions of a view but not political opinion or meaningful satire: they are not making a greater point about social or cultural matters other than

celebrating drug use. They exist solely to promote a business. Commercial expression is protected by the NZBORA. However it has been limited more readily than some other forms of expression, for example political discourse, in overseas jurisdictions and in New Zealand.²

In this instance the Classification Office must balance the rights of the owner against the likelihood of injury to the public good. The images and text on the campervan are used to attract the attention of potential customers and have a commercial purpose which is served by public display. As campervans are predominantly hired by tourists, this campervan is more likely to be in public view than a private motor vehicle. Young viewers attracted by large and colourful images of a Disney cartoon character using drugs do not have the maturity of judgment to recognise the transgressive nature of the material and are vulnerable to its normalising influence. The ongoing effect of impressionable young people's exposure to the material is likely to be the encouragement of attitudes that lead to experimentation with criminal behaviour. Although the material has been weighed under s3B, which allows for an age restriction, greater weight has been given to considerations under s3(3)(d) and s3(4) in classifying the publication as objectionable. Significant injury to the public good, in particular the promotion of criminal behaviour to children and young teenagers arising from the public display of the campervan, is likely.

Because of the problematic nature of the images and text on the campervan and the likelihood of harmful and potentially ongoing effects on young viewers, a classification of R16, which would prevent access by children and young teenagers, has been considered. However, such a restriction would have consequences beyond the intended effect: the medium makes it impossible to protect children and younger teenagers without preventing the campervan from being publicly available to anyone. The application of any of the available conditions in respect of public display is manifestly impracticable.

In classifying the campervan as objectionable, the Classification Office has also taken into account that those who rent the campervan may be unwittingly criminalised if the owner considered that restricting their rental to persons 18 years and over meets the conditions of an R16 classification. While the Classification Office does not necessarily agree that the owner could contract out of their liability in this way, the classification of this campervan as objectionable removes all doubt as to its unsuitability for its intended purpose.

The right to freedom of expression has been considered. The likelihood of injury to the public good arising from the availability of the campervan, specifically the harm caused to children and young teenagers who view the images and text dealing with criminal drug use, has been identified. The protection of children and young teenagers from harmful material is paramount in this instance. This is not an unusual or excessive limitation of commercial free speech. The promotion of other potentially harmful activities to anyone, such as the consumption of tobacco, is also prohibited.

² Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at 537.

The business operations of the owner are not impeded to any great extent by the classification. Wicked Campers may wish to apply for a reconsideration of the Classification Office's decision under s42 of the FVPC Act if they can find a way to prevent people under the age of 16 being exposed to the problematic images and text on the campervan.

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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