

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

Title of publication: Wicked Camper JMY492

Other known title: Not stated

OFLC ref: 1600235.000

Medium: Vehicle

Maker: The Wicked Cult Limited

Country of origin: New Zealand

Language: English

Classification: Unrestricted.

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 JMY492*. 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 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. 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 JMY492* was received on 24 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. 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. 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 Ford Sumner Lawyers, the legal representatives for the owner, on 21 April

2016. The submission has been thoroughly considered and is discussed below. The New Zealand Police declined to make a formal submission on the classification of this van. However, they had previously indicated that the text on the rear of the campervan was their point of concern.

Submission from Ford Sumner Lawyers

The points in the submission that are most relevant to the consideration of *Wicked Camper JMY492* are to do with the use of humour, sexual content and drug use. In paragraph 52.3 the submission refers to decisions of the Classification Office that “display and promote frequent drug use” where the publications were given an unrestricted classification.

In paragraph 51, the submission states:

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 [“dick” is relevant to the campervan under review in this decision]. 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.

The submission describes the content displayed on *Wicked Camper JMY492* and goes on to argue as follows:

It is our client’s position that there is no objectionable aspect to the content displayed on this vehicle. It is not foreseeable that the phrases and imagery as a whole will be offensive to any groups in society.

While it is accepted that the word ‘dick’ and ‘bong’ may cause mild offence, mild offence by a small group of individuals is wholly insufficient to justify a restricted classification, as noted above.

Furthermore, the word ‘bong’ in itself does not promote or display drug use, and is a commonly used and socially accepted word in popular culture.

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 JMY492 are superimposed on a background of colourful paintwork patterned in orange, yellow and purple. The front has a large “Peace” symbol on the bonnet. Text on the back window gives contact details.

The left side has a large image of the purple head of a pig-like creature wearing sunglasses. Text in blue capitals beneath the van’s windows identifies the creature as “Captain Goodvibes”, a cartoon pig that was, according to Wikipedia, an icon of 1970s Australian surfing culture.

The right side has a large, central image of an eyeball with arms and legs, on a surfboard against a background of sea and sky. The image is framed by freeform orange shapes.

Text in white capitals beneath the back window reads, “Surf’s short, death’s long, so’s me dick, pass the bong”.

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 rhyming couplet on the back of the campervan is a quote associated with the character Captain Goodvibes, whose image appears on one side of the van. It contains the word "dick", a slang term for male genitalia. The word has migrated into other contexts and is a commonly heard epithet, but its use on the van is clearly a reference to the character's penis. Although the rhyme is an example of light-hearted humour, the word renders the text somewhat vulgar. The use of the word on the back of a campervan is further considered under s3A.

Matters such as crime

The humorous rhyme on the back of the campervan includes the phrase, "pass the bong", an obvious reference to a device generally used to smoke cannabis. Possession of cannabis utensils such as a bong is an offence under s13 of the Misuse of Drugs Act 1975. The issue is discussed 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.

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.

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

Wicked Camper JMY492 promotes and encourages the use of an illegal device commonly associated with the drug cannabis, but it does so to a very low extent and degree. On campervans previously classified as objectionable,² text and images tend to reinforce each other to produce an overall drug use theme. The same cannot be said of *Wicked Camper JMY492*, where the problematic material consists of a single reference to a bong in text on the back of the van. There is no supporting material in any images or text on the other surfaces. It is likely, however, that young teenagers who read the text will be attracted to humour that is broadly countercultural: it expresses the attitudes of a surfing culture that differ considerably from the norms of mainstream society. Some vulnerable young viewers may well be impressed by the images and text on the van and it is possible that this would contribute to the formation or reinforcement of attitudes leading to later experimentation with illegal drugs, for instance. However, possibility does not amount to likelihood – the majority of young viewers will be amused (or perhaps confused) by the material but not greatly affected by it.

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 rhyming couplet that contains the sexual term "dick". When it appears as part of a rather juvenile attempt at humour, displayed in public view on the back of a campervan, the word is likely to be considered offensive by many people, although the extent and degree of offence will vary. Given the light-hearted nature of the text on the back of the van, it is difficult to conclude that the public in general would consider the word "dick" or the whole of the joking rhyme as "highly offensive".

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).

² *Wicked Camper JLT886*, *Wicked Camper GCT799* and *Wicked Camper JKC408* (OFLC Refs: 1600221, 1600222 and 1600223)

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. Australians are more likely to recognise the character of Captain Goodvibes than New Zealanders, who will probably not connect the rhyme on the back of the van with an Australian cartoon character created in the 1970s. 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 seeing a humorous rhyme containing a sexual slang term for a penis on the back of a van. The mention of a bong may also cause offence to some people. However, the level of offence is unlikely to be high.

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 on the campervan use a cartoon character, apparently a popular cult hero for Australian surfers in the 1970s, for a commercial purpose.

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 JMY492 is classified as unrestricted.

In a framework set by the NZBORA, classification decisions must be reasonable and demonstrably justifiable. In this instance, text on the back of the campervan is a humorous quote associated with a countercultural figure originating in Australia in the 1970s. The rhyme contains a slang reference to the character's penis and to a utensil commonly associated with cannabis use. The material does not promote or encourage drug use to a significant degree. While the Classification Office must be concerned about any public use of humour that makes light of drug use, in this case the link is tenuous. Only the phrase "pass the bong", appearing as part of a humorous rhyme on the back of the van, raises the question of promotion or encouragement for drug use, with or without a bong. It does not do so in a manner likely to make enough of an impression on young viewers to justify restricting the campervan from them, an outcome that would in effect be banning its use as a campervan.

The somewhat juvenile humour of the text on the back of the campervan has also been considered under s3A, which allows an age-related restriction. If the joking rhyme, or the sexual slang term it uses, 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 Classification Office does not believe that the language used would be considered "highly offensive by the public in general", as required for consideration of a restriction. 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 mildly offensive sexual reference and the reference to drug use 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 Classification Office on *Wicked Camper GCT798*³ 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

³ OFLC Ref: 1600234

people, who view that reference and are influenced by it. On the other hand, the rear of *Wicked Camper JMY492* contains only puerile, schoolboy humour that involves a slang term for a sexual body part and a single reference to a device commonly used for smoking cannabis. Nevertheless, the Office acknowledges the high level of public concern in relation to offensive content of the type displayed on this particular 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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