

BILLBORED

THE UN-OFFICIAL NEWSLETTER OF B.U.G.A. U.P.
Billboard-Utilising Graffitiists Against Unhealthy Promotions

NUMBER 22, JUNE 1985

ISSN 0813-7064

PRICE
20 cents

Film-maker Convicted on BUGA UP Charge

Sydney film-maker, Martha Ansara, has been convicted and fined \$80 on a charge of "Malicious injury to a billboard".

Ansara was arrested in July last year while refacing a billboard near Leichhardt Primary School in Sydney. The ad, for Benson and Hedges cigarettes, had read "Excellence in extra mild". She had changed this to "Excellence in extra mildew, rots your lungs, and also kills you". (See 'Billbored' 16, August 1984)

At the time of arrest, she was charged with "marking premises with pain", a charge which has previously been ruled by the courts not to be applicable to billboards (see 'Billbored' 14, May, 1984). Fearing that the case would be dismissed on this technicality, Ansara phoned the poster company and asked that the charge be changed to "malicious injury", a much more serious offence and one which she would have a chance to argue on its merits.

The charge was changed, a plea of "not guilty" entered, and the case adjourned for hearing in January, 1985. After two more adjournments, the case was finally heard on May 17th, at Castlereagh St. Court, Sydney.

Evidence

The arresting policewoman tendered two spray-cans as evidence. She told the court that she was driving along at lunchtime when she saw a woman accompanied by a young child painting on the billboard. She stopped the car, and asked "What do you think you're doing?" Ansara replied "I don't want the kids to smoke".

A representative of Australian Posters gave evidence that his company owned the poster site, and that they rented the space to Amatil, the tobacco company responsible for Benson and Hedges. He said that only five people in NSW are authorised to maintain their poster sites and that Ms Ansara was not one of them.

Ansara then took the witness stand, and told the court that she had "improved the billboard because it was just across the road from a school, and it was enticing children to smoke". She said her mother had died of lung cancer from smoking, and that another member of her family who had been addicted to "hard" drugs had found it harder to give up smoking than the other drugs.

Cross-examination

After Ansara had completed her evidence, the police prosecutor then cross-examined her.

Q: You admit you did spray those words on the billboard? A: Yes

Q: And people were passing by all the time? A: Yes

Q: There are other ways to overcome the problem of advertising cigarettes.

A: There is a lot of feeling against it, but nothing seems to happen.

Q: Are there other means?

A: In this particular case, no.

Q: Couldn't you write to the company and ask them to take it down?

A: What do you think?

Q: You said your grandparents and mother died of cancer. Couldn't that have been from some cause other than smoking?

A: No it couldn't. My mother just coughed and coughed and coughed.

Q: You didn't tell the constable about your parent's or grandparent's death.

A: It's best not to speak to the police about things without legal representation.



Martha Ansara and co-conspirator Alice (age two)

"Lawful Excuse"

Ansara's barrister, Stuart Clark, argued that his client had not intended to damage the poster, but to improve it. He pointed out that the full charge read "maliciously injure a billboard without lawful excuse", and that she did have a "lawful excuse".

He said that if a person had been charged for smashing a car window, and he had done so because a child inside was about to drink a bottle of cleaning fluid, they would be acquitted because they had a "lawful excuse".

In this case, the excuse would be even stronger, since the offence was very minor in comparison to the massive harm done by such advertising, a position supported by every major health institution in the world, as well as the Australian health department itself.

Protest

In summing up the case, the magistrate made it clear that he understood the defendant's motivation. He said that there was no doubt that the graffiti had "added, with some emphasis, to the message which the poster sought to portray", and this constituted damage. He accepted that there is "substance in her concern, in that smoking is dangerous, advertising encourages smoking, and children react to advertising".

He said that even though there may have been no malice, the defendant had intended to "injure a body corporate in property or otherwise", and described the action as a "well-meaning protest done at the expense of somebody else who espouses a contrary point of view."

The offence was therefore proved.

The magistrate commented that it was unfortunate that the process of protest occupies a lot of court time.

Ansara has lodged an appeal, in the belief that a higher court will accept that her "lawful excuse" was a valid defence.

Anyhow* Have A \$10,000 fine

After a three-day court battle during which the Non-Smokers' Movement of Australia argued that the law prohibiting cigarette advertising on television had been broken, Channel 10 has been committed for trial.

Ban not enforced

Although cigarette advertising was theoretically banished from the airwaves some ten years ago, the Broadcasting Tribunal has been turning a blind eye to sports matches which are sponsored by tobacco companies. The result is that when the game is telecast, cigarette ads go to air as well.

After repeated appeals to the Broadcasting Tribunal and the Minister for Communication had been rejected, the Non-Smokers' Movement decided to launch a prosecution (see 'Billboard' 17, October 1984). This was done by lodging an "information" with the Court, alleging that Winfield ads had been broadcast during the 1984 Rugby League Grand Final. A summons was issued for United Telecasters (Channel 10) to appear in court.

A breach of the Act is a Federal crime, with a maximum penalty of \$10,000, so the case must ultimately be decided by a District Court. First, a committal hearing is held in front of a magistrate, who decides whether there is a "case to answer". The case could then be committed for trial.

Magistrate's Court

The committal hearing started on 6th May 1985, in the Castlereagh St Magistrate's Court, Sydney.

Understandably, United Telecasters launched an aggressive defence, based mainly on subtle points of law rather than arguing about the details of the broadcast. United Telecasters was represented by barrister Jim Spigelman, who ironically had been part of the Media Ministry when the cigarette advertising ban was initiated by the Whitlam government.

The first obstacle was that of the "particulars" of the case. Mr Spigelman claimed that details of the alleged offence provided by the prosecution had not been specific enough to allow them to prepare their defence. The particulars provided mentioned a large number of alleged cigarette advertisements spanning some five and a half hours of broadcast.

Counsel for the NSMA, Gordon Johnson, said that it was not possible to be more specific since Channel 10 had refused to supply a copy of the tape broadcast. Mr Johnson produced a written schedule which listed some 206 occasions on which Winfield signs were seen.

The magistrate, Francis MacKenzie S.M., ruled that the particulars were sufficient and refused an adjournment on those grounds. He did, however, rule that it was necessary to select one particular section of the broadcast, as the Court could not consider multiple breaches. The NSMA decided to nominate the dance sequence referred to by the commentator as the "Winfield Spectacular".

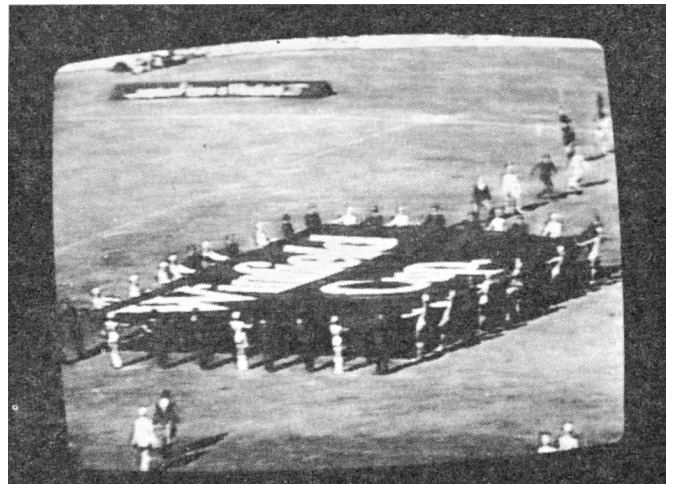
Copyright

The "informant", Mr McBride, then gave evidence that he had watched the Grand Final on 23rd September last year, and made a video recording from which he had prepared the schedule of appearances of the Winfield signs. He asked to tender the tape as evidence.

Mr Spigelman objected, on the grounds that it had not been established that the recording equipment was capable of making an accurate recording, or that the tape itself was an accurate record, or that the playback machine could be relied on.

Mr McBride, who is a qualified electronic engineer, was then called as an "expert witness" and the objection was overcome.

Next Mr Spigelman tried to prevent the tape being tendered as evidence on the grounds that to play it would be a breach of copyright. Mr Johnson argued that according to other precedents, evidence could be admissible even if it had been obtained illegally.



This massive winfield ad was unfurled at the height of the 'Winfield spectacular'. Channel 10 argued that it was "incidental" to the broadcast.

In any case, there was no proof that the tape was in any way illegal.

The question was one of the magistrate's discretion, and he ruled that the tape should be admitted as evidence, and part of the tape was played.

The section shown started with playing of the "Winfield Theme" music, and the announcement of the "Winfield Spectacular", and concluded with the unfolding of a large flag bearing the words "Winfield Cup".

Mr Spigelman pointed out that the "Winfield Spectacular" continued for some minutes after the end of the section played to the Court.

Also tendered as evidence were several examples of Winfield advertisements, including photographs of billboards, signs as displayed in shops, a giant replica of a Winfield pack (used as "point of sale" display) and a packet of Winfield cigarettes.

Last-Ditch Effort

Mr Spigelman then made some further legal points about the wording of the Act itself. He argued that section 100(10), which dealt with the concept of "accidental or incidental", was not an exception to the ban implied by section 5(a), but a definition of what was to be construed as an advertisement. He claimed that it was up to the prosecution to prove that the defendant had broadcast a cigarette advertisement which was not accidental or incidental. Mr Johnson argued that it was up to the prosecution merely to show that a cigarette ad had been broadcast, and it was then open to the defendant to prove that it was accidental or incidental.

Mr MacKenzie did not accept the defendant's submission, and the prosecution's case was concluded. At this point the case was adjourned overnight, the ruling on whether there was a case to answer to be delivered the next morning.

Case To Answer

According to the Justices Act, to establish that a "prima facie" case exists, the Magistrate must decide whether when all the evidence is taken, the evidence is capable of convincing a properly instructed jury that an indictable offence has been committed. Mr MacKenzie said that a judge would be compelled, by the Full Court judgement, to instruct the jury as to what is meant by an advertisement for cigarettes. This need not mention the words "cigarette". He said that he was of the view that a jury could be satisfied beyond reasonable doubt that what Mr McBride saw on T.V. was a cigarette advertisement, and that there was a case to answer.

Before committing United Telecasters to trial, they were given the opportunity to present evidence in their defence. Mr Spigelman said he wished to play the full seven hours of the Grand Final to show that the "Winfield Spectacular" was incidental to the many other activities broadcast during the day's coverage.

Mr MacKenzie ruled that since the prosecution had been "backed into a corner" and forced to select just a short segment of the tape, any other section was now irrelevant and could not be played.

Mr Spigelman said that his client was not guilty, and that they reserved their defence.

United Telecasters was then committed for trial in the District Court in Sydney at a date to be set.

Implications

Under the Administrative Decisions Judicial Review Act, United Telecasters can now appeal any decisions made by Mr MacKenzie on the grounds that they were incorrect in law. Mr Spigelman has foreshadowed their intention to test two decisions in this way.

The implications of the committal go well beyond the potential \$10,000 fine which could be imposed if the District Court prosecution succeeds, as compliance with the Act is a term of licence, and United Telecasters could, in theory at least, have its licence revoked or suspended as a result.

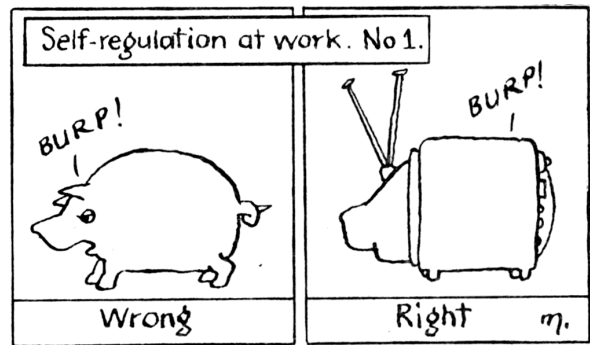
The ruling comes at a particularly embarrassing time for United Telecasters, as their licence is due for renewal this year, and hearings will be starting soon. The case could also prove problematical for the station's owner, Rupert Murdoch, who is currently trying to purchase television stations in the U.S.A. A ruling against him, as licensee, could stand him in bad stead with the American licensing authority. Worse still, should he be forced to sell his Australian television interests on taking U.S. citizenship, a potential loss of licence hanging over Channel 10 could be a serious impediment to such a sale.

NSMA's Next Step

The next hurdle for the NSMA is the potential cost of the District Court case. Having been committed for trial, the case is now in the domain of the Public Prosecutor, who can, at his discretion, continue the prosecution. Alternatively, the Broadcasting Tribunal or the Minister for Communications could step in and carry it through. Given past performance, and the inevitable political pressure that will be brought to bear by the media, advertising and tobacco lobbies to immobilise these "public interest" bodies, it may well turn into a "David versus Goliath" struggle, in which case the NSMA will be applying for legal aid.

The other issue to be resolved is the advertising which was eliminated from the scope of this committal. It is the NSMA's intention to test the legality of all the cigarette advertising matter included in sports broadcasts, not just the "spectacular" which is the subject of this case. The NSMA is now considering the possibility of laying separate informations relating to the "A-frame" signs, perimeter advertising, and logos stained into the grass.

This will of course be another costly exercise, and the NSMA hopes that the television stations will save themselves and all concerned a lot of trouble by voluntarily refusing to broadcast events at which tobacco advertisements are placed so that cameras cannot avoid them.



"Double Standards Council" Does It Again

Several complaints about advertising for low-alcohol beers have been rejected by the Advertising Standards Council. A number of complaints were lodged with the ASC by BUGA UP activists who claimed that they are in breach of the Alcohol Code which prohibits encouraging people to "over indulge".

The prime offender was the Bogey-winning "Doug Walters" ad for Tooheys 2.2 which challenges viewers to down seven beers in an hour (see Billboard 18 and 19).

The complaints were dismissed with the explanation that "Council exercises its discretionary power by over-riding a technical breach in the interests of the community". It was reasoned that advertising low-alcohol beer is in the community interest, so encouraging people to drink lots of low alcohol beer is even better.

To lend credence to their defence of the breweries, the ASC quoted the Commonwealth Department of Health, who stated in a submission to the Broadcasting Tribunal's review of Alcohol Advertising that promotion of low-alcohol beer can be of benefit to the community. What they didn't mention was that in the same submission the Department supported the Tribunal's view that alcohol advertising should be allowed on television only after 8.30 pm, since association of liquor with favourable lifestyles can have appeal to young children.

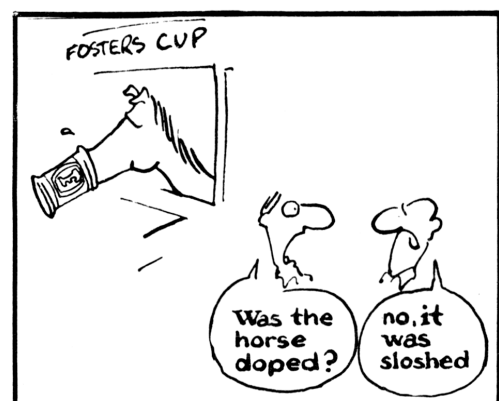
One can but speculate on whether the ASC will be equally eager to follow the advice of the Department of Health in this regard. With the Media Council pulling the ASC's strings, it is likely to seek a conflict of interests by supporting the Tribunal's proposal.

Melbourne "Cup" Now A "Tinnie"

In a sequel to the takeover of the Caulfield Cup by Foster's beer, (Billboard 16, August 1984), Carlton and United Breweries have announced their sponsorship of Australia's premier racing event, the Melbourne Cup.

The sponsorship will enable the Victorian Racing Club to more than double the stakes of the new "Fosters Melbourne Cup" to \$1 million.

Responding to widespread public outrage at the prostitution of another Australian institution to the legal drug industry, the President of the V.R.C. said: "I see this joint promotion as one that will promote both Posters and Australian racing on a rapidly expanding world market... I can think of no better standard bearer for the Cup in the world arena than Fosters".



Art Gallery Protester Acquitted

A Sydney artist who was arrested while protesting against cigarette advertising has been acquitted after a series of court hearings spanning nearly three years (see 'Billboard' 2, October 1982 and 19, December 1984).

Back in August 1982, Richard Bolzan was outraged to find an Alfa-Romeo, racing car emblazoned with marlboro advertising in the foyer of the New South Wales Art Gallery. The car was ostensibly part of an exhibition called "Art and Technology", but Bolzan suspected that the car had more to do with advertising than with art when he discovered that Philip Morris (manufacturers of Marlboro) were sponsoring an exhibition in the gallery at that time.

He came back on a busy Sunday afternoon, wearing a costume covered in no-smoking stickers, and when near the car he pulled out a strong chain from under his clothes and padlocked himself to the roll-bar of the car.

Appeal To Trustees

A large contingent of supporters of the non-smoking cause then entered the gallery and began ritualistically dumping cigarette butts and ash over the car, while Bolzan read an open letter addressed to the trustees of the gallery, urging them to sever their relationship with tobacco sponsors. He said he would not leave until a representative of the Gallery spoke to him.

After about an hour the police rescue squad arrived and cut the chain with bolt cutters. Bolzan was arrested, charged with "serious alarm or affront".

A few days later the charge of "malicious injury" was added, Alfa Romeo claiming that extensive damage had been done to the car.

Judge and Jury

Because the alleged damage amounted to nearly \$2,000 the case was heard in the District Court, in front of a jury.



The marlboro car before...

After 2 weeks of hearings in October 1984, Bolzan was found innocent of the "common intent" in the malicious injury case. The other protestor was found guilty and fined \$75. No costs were awarded to Alfa-Romeo, and the judge expressed her surprise that the case had been brought before the district court at all.

Not Alarming

The last episode in this saga took place in May, when the charge of "Serious Alarm or Affront" was heard.

The police claimed that several members of the public had been alarmed by the event, and witnesses, including art gallery attendants, gave evidence that they were frightened that paintings in the gallery would be damaged.

Bolzan carried out his own defence, arguing that "performance art" is quite common in the gallery, and people go there to be confronted with new ideas.

The magistrate said he recalled a time when a naked woman had played a cello on the roof of the gallery, and that there had been exhibitions featuring naked people which were probably quite shocking. He asked one of the gallery personnel whether action had been taken against these people. The answer was, predictably, no.


Charge Dismissed

In dismissing the charge, the Magistrate said that the car was clearly part of a cigarette advertising exercise, and what had taken place was clearly a protest against cigarette advertising. He said that because these are commonplace these days, no-one could have thought that any violence or danger was imminent, and a "reasonable person" would not have been alarmed or affronted.

Commenting on the case Bolzan said: "When I planned my protest, I wanted to show that I could make a strong statement and stay within the law. The court's decisions have certainly shown that public and judicial opinion are swinging against the tobacco pushers."



And after.



B.U.G.A. UP

If you would like to join the campaign against Unhealthy Promotions, or would like further information about B.U.G.A. U.P. write to:

N.S.W.	B.U.G.A. U.P. Box 80 Strawberry Hills N.S.W. 2012	WA.	B.U.G.A. U.P. Box 598 Subiaco W.A. 6008
Vic.	B.U.G.A. U.P. Box 285 Fitzroy Victoria 3065	QLD.	B.U.G.A. U.P. Box 76 St. Lucia QLD. 4067



Billboard at White Bay, Sydney where yellow-cake is loaded onto ships for export