

Judge expresses sympathy, but fines graffitists

By JOHN SLEE,
Legal Correspondent

Two members of the group calling itself Billboard Utilising Graffitists Against Unhealthy Promotions (BUGA UP) were found guilty of malicious damage to a poster advertising cigarettes yesterday by a jury in the Parramatta District Court.

Judge Loveday bound the men over in the sum of \$200 to be of good behaviour for 12 months. He ordered each to pay \$35 to the Clerk of the Peace.

The men, Geoffrey Jon Coleman, 23, research officer, of Foucart Street, Rozelle, and Neville Bruce Biffin, 31, Telecom technician, of Marne Street, Vacluse, had pleaded not guilty to a charge of maliciously injuring a Marlboro cigarette advertisement, the property of Philip Morris Ltd, at Lidcombe railway station soon after midnight on January 6 last year.

Coleman had admitted using a spray can to write the words "Horses smell better. BUGA UP" on the advertising poster and Biffin to keeping watch as a "cockatoo."

In separate statements from the dock each defendant had said their intention had been to warn people, especially children, against the dangers of smoking cigarettes.

After considering its verdict for three hours the jury found them guilty.

Before pronouncing sentence, Judge Loveday told the defendants he had great sympathy for anyone campaigning against "the evil of cigarette smoking."

He added: "As a non-smoker who has to put up with others who smoke and from what I have read about its deleterious effects on health I have the utmost sympathy for you, or any person, doing what he thinks can be done to remedy the matter."

But, Judge Loveday said, he could not act out of sympathy, but to uphold the law.

He rejected an application by Mr Stuart Littlemore, representing Biffin, for the charge against him,

though proved, to be dismissed under Section 556A of the Crime Act, which gives a court such a discretion when the offence is trivial and all the circumstances justify such a course.

Judge Loveday said that because Biffin had shown no contrition he could not dismiss the charge. But he would impose conditional sentences on both defendants.

Judge Loveday had earlier asked how the case had been brought in the District Court, rather than dealt with by a magistrate.

Mr E. O'Loughlin, prosecuting, said the case had been referred by a magistrate because there were several similar prosecutions pending in the lower courts.

Judge Loveday said the case before him, decided by a jury on its particular facts, would not be a precedent binding on magistrates hearing similar prosecutions on different facts.

Judge Loveday said he agreed with counsel that the case was of a trivial nature in many respects. "It could have and should have properly been dealt with by a magistrate."

Two defence witnesses called yesterday gave evidence that in their opinion the graffiti applied by the defendants could have enhanced rather than diminished the impact of the cigarette advertisement by attracting greater attention to it.

Mr Frank Watters, gallery owner, of East Sydney, said that graffiti was "the art of protest." The advertising poster in this case, with its graffiti superimposed, could be described as art in that sense.

Dr James Lawson, director of the northern metropolitan region of the Health Commission, told the court of his work in the commission's anti-smoking campaign.

He said he believed that, as adult smokers turned away from smoking, cigarette companies looked to younger people for custom and directed more of their advertising towards them.

He said that in his opinion graffiti on hoardings advertising cigarettes might work to the cigarette companies' advantage, contrary to the intention of those writing the graffiti.