

Defence in graffiti case puts 'enhancement' argument

By JOHN SLEE,
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A man charged with wilful damage of billboard advertising cigarettes could not be guilty if he honestly believed the graffiti he added to the poster was an enhancement of it, the solicitor representing the man told a magistrate in Newtown Court of Petty Sessions yesterday.

Before the court was Frederick Cole, invalid pensioner, of Harris Stret, Ultimo, charged with wilfully damaging a poster advertising Benson and Hedges cigarettes on a billboard at Newtown railway station at about 1 pm on September 2, 1981.

The stationmaster, Mr Bernard Marsh, told the court he saw Cole writing the words "drug pushers" on the poster.

The court was told the poster carried the advertising slogan "Excellence in mild." Beneath it in black paint, were three lines — "Overt Govt Kilboard," "The real drug pushers" and "BUGAUP," the acronym for the organisation calling itself Billboard Utilising Graffitiists Against Unhealthy Promotions.

Cole has been charged under section 73 of the 1980 Transport Authorities Act, which states: "A person shall not wilfully damage or deface any property vested in or belonging to (a transport) authority." It provides a penalty of a \$400 fine or imprisonment for six months.

Mr Bruce Miles, solicitor appearing for Cole, told Mr Brian

Hayes, SM, his client had three defences.

First, the expression "wilfully damage" meant the defendant had to know and believe in his own mind that his action was causing damage. If he believed, even mistakenly, that what he had added to the poster was an enhancement of it, he could not be said to have wilfully damaged it.

Second, for the defendant to be convicted there must have been damage in the objective sense.

On this point, neither WD and HO Wills nor the State Rail Authority had come to court to say their property had been damaged, Mr Miles said.

Cole's third defence was that of necessity.

"He who takes action, even though it is against the accepted law, if he is preventing a greater danger, is not breaking the law," Mr Miles said.

The defendant might have caused some slight damage to the paper on which the cigarette advertisement was printed, but that was small compared with the damage to health he reasonably saw from the promotion of the sale of cigarettes, Mr Miles said.

The magistrate said he would allow Mr Miles time to put his submissions in writing.

In the meantime, he said, his own thoughts were that in cases where a person, set about to secure certain objectives by unlawful or improper means "principles of maliciousness are involved."

It was not against the law for companies to put up advertisements such as the one in this case, Mr Hayes added.

He adjourned the hearing to July 29.