

## Commercial Use of Royal Images

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*Explains the background to a recent dispute*

In March the Public Trust was forced to withdraw a planned advertising campaign built around the images of the late Diana Princess of Wales and of His Royal Highness Prince William of Wales. At virtually the last moment they were advised that use of photographs of members of the royal family under 18 years in this way was prohibited.

How could this situation have come about? In short, because the regulations governing the use of royal images in New Zealand are in urgent need of updating.

In the United Kingdom, to avoid the commercial exploitation of the royal family, the Lord Chamberlain's Office has established certain rules which govern the use of photographs, portraits, engravings, effigies and busts of The Queen and members of the royal family.

These rules prohibit the use of royal images for advertising purposes on certain specific items such as coins, stamps, medals, trademarks, designs, articles of dress and furnishing fabrics. Images of members of the royal family under the age of eighteen may never be used commercially (except in family group photographs on postcards).

Certain restrictions also apply to photographs. Written permission is needed to show the image of The Queen or a member of the royal family with any of The Queen's subjects. Royal images are, however, allowed to be used on articles for sale which are "of a permanent kind, free from advertisement, in good taste", and "which carry no implication that the firm concerned has received royal custom or that the article has been purchased by a member of the Royal Family".

Certain items of stationery, for example, "portrait prints, formal greetings cards and calendars", are also free from restriction, provided that they carry no advertisement. Except when promoting a book, newspaper article or television or radio programme about a member of the royal family, royal images are generally not allowed to be used for advertising purposes in any medium. For special occasions such as coronations, weddings and jubilees, rules may be relaxed for the production and sale of commemorative objects.

Questions about the use of the royal arms, royal crowns, royal cyphers and other royal emblems are answered by the Lord Chamberlain's Office.

In New Zealand, rules very similar to those in the United Kingdom are in force. The Commercial Use of Royal Photographs Rules 1962 (SR 1962/81) are notices approved by Her Majesty The Queen. Each begins with the same explanation:

Notice is hereby given that Her Majesty the Queen has been graciously pleased to approve the following rules governing the incorporation of photographs (including portraits and

representations) of Her Majesty the Queen or Members of the Royal Family in the design of articles for sale.

Two earlier- and very similar rules (1955/87 and 1959/77) were not expressly repealed, but the 1962 rules must be presumed to be the pertinent rules.

The Commercial Use of Royal Photographs Rules 1962 (SR 1962/81) regulates the use of royal photographic portraits. The use of photographs of Her Majesty The Queen or of members of the Royal Family in articles for sale is permitted provided the articles made conform to good taste, and are of a permanent nature (cl 2 (1) (a) and (b)). They must also be free from advertisement or the implication of royal custom (cl 2 (1) (c)). Royal photographs may be sold as portraits, reproduced on postcards, greeting cards, calendars (including trade calendars, provided they are free from advertisements) (cl 3).

Royal photographic portraits may not be used on medals or coins, articles of dress except scarves and head scarves, household linen or like articles or material or furnishing material (cl 4 (a), (b) and (c)). Nor may they be used on any paper or other material which may be used for wrapping or packaging purposes, or adhesive tape (cl 4 (d)). They may not be used on any kind of adhesive seal (cl 4 (e)), or any article which is used to assist the sale of any other article, such as cigarette cards (cl 4 (f)).

Royal photographs may not be used for advertisement purposes in the press, or on television, radio or cinema. There are, however, certain exceptions (cl 5).

The dust cover of a book written about a member of the royal family may bear a picture of that member. A reproduction of the dust cover may be issued for advertisement purposes in the media or in a circular or on a placard. Other pictures of members of the royal family appearing in the book may not be used. If the dust cover does not bear a picture of the member of the royal family who is the subject of the book, then it is allowable to reproduce in an advertisement one photograph of that member (cl 5 (a)).

The cover of a magazine may bear a picture of the member of the royal family who is the subject of an article in the magazine. The picture and the wording used to describe the article should conform to good taste. No advertisement should be incorporated in the design of the cover. A reproduction of the cover, but no other pictures in the article, may be used for advertisement purposes in the media, but not earlier than a few days before the issue of the magazine. If the cover of the magazine does not bear a picture of the member of the royal family who is the subject of the article, then it is permitted to reproduce one photograph of that member in an advertisement (cl 5 (b)).

When a newspaper is publishing an article on a member of the royal family it may advertise the article in the media, or by circular, or on a placard. One picture of that member may be included in that advertisement. However the advertisement must conform to good taste, and may not be issued earlier than a few days before the article is published (cl 5 (c)).

Books, magazine articles and newspaper articles on a member of the royal family may be advertised on television in accordance with the above rules; but no dramatised or illustrated presentation or series of still pictures is permitted, and any sound commentary must be confined strictly to facts relevant to the book or article (cl 5 (d)).

The above rules are subject to the usual questions of copyright (cl 8). Nor do they affect the regulations restricting the use of the royal arms, the royal standard, the royal crown, the royal cypher, or other royal emblems. These remain subject to the control of the Secretary for Internal Affairs (cl 10), and the Flags, Emblems, and Names Act 1981.

These rules are obsolescent in that they prohibit use of photographs of the Prince of Wales and Princess Anne, except for portraits, postcards, calendars and greeting cards (cl 6). It also provides that for the present photographs of Prince Andrew may not be used (cl 7). They are clearly in need of updating.

There were a few changes between the rules of 1955, 1959, and 1962. In 1959 cl 4 (a) was added. This prohibited the use of medals or coins bearing The Queen's effigy. A rewritten cl 3 now allowed selling royal photographs as portraits. Portraits of the Prince of Wales and Princess Anne were now allowed on greeting cards (cl 6). The term photograph was now defined as including portraits (cl 8).

In 1962 a new cl 4 (a) simply prohibited medals or coins bearing any royal photograph or portrait, not just those "bearing The Queen's effigy". The major addition however was the detailed cl 5, which outlines the prohibition on the use of royal photographs for advertising purposes in the press, television, radio, or cinema, and the exceptions to the rule. Although the prohibition is now expressly extended to these media, the introductory clause was not updated, and still refers to "the design of articles for sale", though the purpose of advertising may be to publicise a television programme!

No changes have been made since 1962, leaving the Commercial Use of Royal Photographs Rules 1962 (SR 1962/81) hopeless outdated. Worse, it is ill publicised and all but forgotten. Nor does it cover the situation in which the Public Trust found itself. For the rules of the Lord Chamberlain's Office expressly state that images of members of the royal family under the age of eighteen may never be used commercially (except in family group photographs on postcards).

The legal effect of the Commercial Use of Royal Photographs Rules 1962 (SR 1962/81) lies not in their being printed in the Statutory Regulations series, nor in their being published in the *New Zealand Gazette*. The Sovereign has control of the use of royal images as an aspect of the royal prerogative. The Public Trust was caught by a rule which was stated in the British rules, but not in those in New Zealand. Clause 10 states that

In case of doubt about the application of these rules or for permission to use the Royal Arms, the Royal Standard, the Royal Crown, the Royal Cypher, or other Royal Emblems, reference should be made to the Secretary for Internal Affairs (cl 10).

Although the New Zealand rules are silent regarding the use of images of members of the royal family under 18, the position of the Secretary of Internal Affairs will undoubtedly reflect the same reasoning which is manifest in the Lord Chamberlain's rules. But to make a television commercial which features a member of the royal family would appear to breach cl 5 of the 1962 rules, which prohibits the use of royal photographs for advertisement purposes in the press, or on television, radio or cinema.

Three versions of the rules were issued in the ten years after the accession of Her Majesty The Queen. Although modern advertising practice is generally consistent with the 1962 rules, dangers lurk for the unwary, as they do not reflect the full extent of the control exercised by the Crown.

Absurdly, they would prohibit the use of any photographs of the Duke of York, something which, if complied with, would have rendered coverage of his visit to New Zealand late last year rather difficult. Ignorance of the law is no defence. But when the law is clearly obsolete it is surely time for either repeal or revision of the offending regulations.