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Look who's toking: Russ's habit has station fighting censure

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In The Insider he played Jeffrey Wigand, the anti-tobacco whistleblower who fought to have his story told on America's 60 Minutes.

In the Federal Court yesterday he was seen playing himself, the Marlboro man lighting up as he told his story to Australia's 60 Minutes.

In an ironic turnaround, it is the screening of this real-life image of Russell Crowe that has caused this courtroom drama.

The Australian Broadcasting Authority found that 60 Minutes recklessly breached the Tobacco Advertising Prohibition Act when it aired the image on October 22, 2000, ruling the footage was a tobacco advert, encouraging members of the public to emulate Crowe by smoking, in particular, by smoking Marlboro cigarettes.

Channel 9, which makes the show, was appealing the decision yesterday, submitting it was "unreasonable, irrational and perverse".

During the 60 Minutes interview aired in court yesterday, Crowe was seen in a 15 second segment brandishing a packet of Marlboros as he lit up and started to smoke.

The footage was repeated in the show's "mailbag" section a week later after viewers wrote in to complain about the actor's habit, with one letter saying: "Shame on you Russell. You are not the next Brando, you are the next Yul Brynner."

The ABA investigated the matter and while it found the footage in the original program was an incidental accompaniment, it ruled 60 Minutes had acted recklessly and deliberately in repeating it in its mailbag section. It was this replay that constituted a breach of the act.

"Mr Crowe's celebrity and fame meant that members of the general public who saw the interview might seek to emulate him," the authority said.

"Although there is no evidence that the interview was intended to promote smoking ... the footage in fact promoted those things, in that it encouraged smoking.

"In the ABA's view it is not unreasonable to expect that viewers may be influenced by Mr Crowe's behaviour and may believe that it is desirable to adopt Mr Crowe's behaviour, including smoking Marlboro cigarettes."

No fine was imposed. However, a breach was recorded against the network's licence.

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Channel 9 had argued in its submissions to the ABA that the purpose of the segment was to show the real side of the Hollywood star.

"The fact that Mr Crowe happens to smoke is as much part of his true character and personality as is the fact that he happens to play in a rock band and wear casual clothes when he is home," it said.

The counsel for Channel 9, John Griffiths, SC, argued it was irrational for the ABA to find that the complaints from viewers could be aired without showing the "Crowe-smoking" images.

He said the segment, which included excerpts from *The Insider*, discouraged smoking, rather than promoted it.

Justice Arthur Emmett will deliver his judgement today.

DOs and DON'Ts

WHAT YOU CANNOT PUBLISH

-Any writing, still or moving picture, sign, symbol or audible message that promotes smoking or tobacco products.

- This can include an image of a person smoking, buying a tobacco product or the brand name of a product.

WHAT YOU CAN PUBLISH

- A person may broadcast a tobacco advertisement if : (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement