



Tale of the Tape

Can you legally import martial arts instructional videos?

Vale Tudo is a style of full-contact combat competition popular in Brazil, which spawned Mixed Martial Arts competition (MMA), the fastest growing combat sport internationally. However, it is prohibited to import into Australia certain instructional videos or DVDs of Vale Tudo.

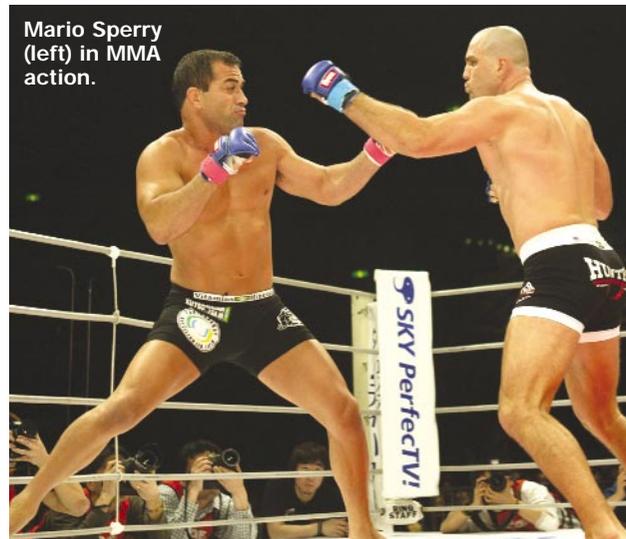
In *Re Huseyin and Director of the Classification Board [2003] AATA 889*, the Administrative Appeals Tribunal affirmed the decision of the Office of Film and Literature Classification not to grant Huseyin permission to import Mario Sperry's Vale Tudo Series 1 DVDs on the basis that they may otherwise be "prohibited goods" under the *Customs Act 1901*.

Vale Tudo is considered the most violent form of MMA competition due to its extremely limited rules. Huseyin had intended to import the videos for the purpose of learning self-defence, building confidence and for entertainment or recreation. He conceded that the use of the DVDs was to instruct in matters of violence and as a substitute for attending lessons in Vale Tudo. The DVDs had been widely advertised as "smashing all barriers of secrecy and knowledge of what it takes to win in the street or the Octagon". There is no doubt that the advertisers promoted the DVDs as being able to assist in the development of "street-fighting skills". The skill taught, however, was limited to unarmed fighting. It included strikes, chokes, takedowns, joint-locks and counters, but excluded so-called "dirty tricks" such as eye-gouging, hair-pulling, biting, etc.

It was the opinion of the Classification Education Manager that some DVDs in the series may be considered as "borderline" and due to their instructional emphasis, particularly in relation to street-fighting, may be a breach of Regulation 4A of the *Customs (Prohibited Imports) Regulations 1956*. The Act prohibits goods that may "promote, incite or instruct in matters of crime or violence" [subparagraph (d)], or "describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or

abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be imported".

This case is somewhat unusual because permission was sought to import the DVDs before Huseyin had purchased them. Therefore, Customs did not have a chance to inspect the DVDs nor make a decision as to whether the DVDs were prohibited goods. Customs, however, tended to follow the recommendations of the Classification Board



Mario Sperry (left) in MMA action.

as to whether seized films, literature, videos or DVDs contravene the Regulations.

The Classification Board would follow guidelines in coming to a decision as to what amounted to community standards acceptable in matters of violence. It appears that the Classification Board's view was that violence for the purposes of self-defence is acceptable, but tapes that instruct in matters of violence per se are not. However, such guidelines are not part of the Regulations and might result in contradictory approaches taken by Customs in respect to such materials.

Certainly, with so many other violent films available in Australia, the decision to refuse Huseyin permission to import the DVDs appears to be an inconsistent application of policies as to what is acceptable by community standards. However, the uncertainty in this case lies in whether or not the Classification Board had the power to grant permission to import goods to which the

Regulation applied, without any decision being made by the Classification Board (or any other decision maker), as to whether the Regulation did apply to the goods. The Senior Member did not finally resolve this issue and it may be the subject matter for a future test case.

One thing is certain: Customs will seize films, literature, videos and DVDs that instruct in violence. Unfortunately for Huseyin, he conceded that the DVDs did instruct in matters of violence and the Classification Board was of the view that the focus of the DVDs was heavily on aggressive or attacking techniques rather than self-defence or avoiding conflict. Accordingly, there was little room to argue on discretionary grounds. For example, under regulations 4A (2AA) the attorney general could take into account a number of factors in deciding whether to grant permission, including whether the goods to be imported are of an artistic, educational, cultural or scientific nature.

For the martial artist intending to import material that might be considered "borderline", it is the practice of the Board of Classification to not grant permission to import such materials. In those circumstances, it may be appropriate to arrange for such materials to be imported with the risk of them being seized and declared to be prohibited goods, and then to challenge that seizure. By doing so, the Classification Board would have to classify the materials for release or declare them as prohibited goods.

Such a challenge of the decision that the materials in question are prohibited goods might be more likely to be successful where a decision was made under Regulation 4A(1A) subparagraphs (a), (b) or (c), as these contain a qualifying provision that depends on matters of opinion, but subparagraph (d) (mentioned above) does not have such qualification.

Similar considerations arguably apply to those martial artists who intend to produce overseas instructional videos or DVDs of similar nature and then sell them back into Australia. Before you venture into such projects, seek independent legal advice.

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