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Collective Shout's Victory Against Sexpo: A Win for Children's Rights

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Abstract

This report is an account of the legal battle between Australian grassroots campaigning movement Collective Shout and Sexpo, the annual sex industry exhibition. Sexpo brought a lawsuit against Collective Shout after their campaign against Sexpo's promotion of live-streamed porn shows on public buses servicing school routes. In April 2018, Sexpo's application was dismissed, with Sexpo ordered to pay Collective Shout's legal costs.

Keywords

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ABSTRACT

This report is an account of the legal battle between Australian grassroots campaigning movement Collective Shout and Sexpo, the annual sex industry exhibition. Sexpo brought a lawsuit against Collective Shout after their campaign against Sexpo's promotion of live-streamed porn shows on public buses servicing school routes. In April 2018, Sexpo's application was dismissed, with Sexpo ordered to pay Collective Shout's legal costs.

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Australian grassroots campaigning movement Collective Shout (www.collectiveshout.org/) was initiated in 2009 with the aims of challenging the objectification of women and the sexualization of girls in media, advertising, and popular culture. Over almost a decade, and with more than thirty thousand supporters across the country, the movement has been a prominent voice against the pornification of culture. By running campaigns against corporate "sexploitation" offenders, we have achieved a series of high-profile victories. Our latest victory was winning a legal battle with Sexpo, the annual sex industry exhibition. Sexpo brought a lawsuit against Collective Shout after we campaigned against its promotion of live-streamed porn shows on public buses servicing school routes.

Billed as the world's longest running "Health, Sexuality and Lifestyle" exhibition, Sexpo was first held in Melbourne in 1996, with the goal of bringing adult products into the mainstream. Twenty years on, Sexpo is held in most Australian capital cities for a three-day period each year, as well as in South Africa and London ("What is Sexpo," 2018). The brand is owned by Kenneth Hill, owner of adult retailer Club X chain (Hatch 2016).

Sexpo's 'attractions' include fetish demonstrations, sex toys, and replica vaginas, and live entertainment from porn performers. Writer and Collective Shout co-founder Melinda Tankard Reist wrote after her visit to Sexpo: "If what I witnessed is supposed to promote a happy, healthy sex life, then I think I just saw the death of sex" (Tankard Reist 2011).

The brand has a history of inappropriate public stunts, including flying a branded promotional banner over a school, tweeting rape jokes (SBS News 2014), and "visually defacing" (Stuart 2013) the entrance to Melbourne amusement park Luna Park by parking a penis-shaped truck in front of the venue's iconic entrance,

an open mouth. In 2017, Sexpo hosted veteran pornography performer Ron Jeremy as a special guest (“Adult Star Ron Jeremy,” 2017) despite multiple allegations of rape and sexual misconduct against him (Dickson 2017).

Sexpo is a long-term corporate offender, promoting the adults-only event on billboards covered with highly sexualized imagery, and even on designated school buses, with the slogan “Sexpo: the most fun you can have with your clothes on” (Bagshaw 2014).

Last May in Western Australia, we discovered that government-owned public buses servicing school routes were emblazoned with ads for Sexpo, complete with the URL web address for Sexpo’s major sponsor MyFreeCams.com.

The web-camming site hosted live-streamed porn shows featuring young women engaged in graphic sexual acts, including penetration with objects—now made easily accessible to any child with a smartphone.

When an adult deliberately exposes a child to pornography, we call it grooming. The use of pornographic and sexually explicit material in grooming children for sexual abuse and exploitation is well established (Davis 2012, Elliot, Browne & Kilcoyne 1995, Mcalinden 2006). We argued that Sexpo’s promotion of pornography and prostitution to children on their journey to school was tantamount to grooming.

Australia’s advertising regulatory body Ad Standards had already dismissed complaints about the ads. The current system of advertising industry self-regulation has attracted strong criticisms from academics and researchers (Gurrieri, Cherrier & Brace-Govan 2016; Gurrieri 2016; Brennan, Jevons & Donnar 2016) as well as medical professionals. In 2012, President of the Australian Medical Association Dr Steve Hambleton called for a new government inquiry into the sexualization of children and accused Ad Standards of “failing to protect children from sexualized advertising” (Collective Shout 2012). Collective Shout has regularly documented the many flaws in the current system of advertising industry self-regulation and the complaints process (Roper 2016), often a time-consuming and ultimately pointless endeavor. Complaining about Sexpo was no different. According to Ad Standards Case Manager Nikki Paterson, Sexpo was allowed to name its sponsor—even if it was the URL to a pornographic website—and advertising live sex shows to a broad audience that included children was not a breach of code 2.4 (Phone conversation, 21 May 2017) which requires advertising or marketing communication to “treat sex, sexuality, and nudity with sensitivity to the relevant audience” (AANA 2018).

Collective Shout’s subsequent petition (Burrows 2017) to prevent similar ads on Brisbane city buses due out the following month attracted over 5,000 signatures. Our campaign, along with social media posts labeling Sexpo’s promotion of pornography and prostitution to children as predatory and tantamount to “corporate pedophilia,” resulted in legal action. Lawyers for Sexpo Australia demanded that we cease our campaign and issue an apology, threatening to sue Collective Shout for damages for “misleading and deceptive conduct” under section 18 of the Australian Consumer Law (ACL).

Sexpo claimed that these statements were misleading or deceptive because they represented that it, and those associated with operating it, “were pedophiles, sexual predators or child abusers” and “had committed a serious crime” (Reeves 2018).

Section 18 of the ACL prohibits conduct in trade or commerce which is misleading or deceptive or is likely to mislead or deceive. Sexpo also claimed that Collective Shout's statements were misleading because the bus ads promoting MyFreeCams.com did not share a URL, and only included the words "MyFreeCams." It also denied the image had ever existed on a bus or any other physical medium. We published a series of photos refuting these claims, showing the image featured on buses and posters in various Australian states. Tellingly, in the weeks following the release of our petition, the ".com" from "MyFreeCams.com" was blacked out on a Sexpo billboard (Collective Shout 2018).

Collective Shout's lawyers responded to Sexpo's lawyers' demands by pointing out the reasons why there were no reasonable grounds for Sexpo's allegations of "misleading and deceptive conduct"; and also why, given that Collective Shout is an NFO/charity [pursuing political advocacy objectives/engaging in political commentary], it is not a trading corporation, nor engaged in "trade or commerce" for the purposes of the ACL. Nevertheless, and despite Sexpo gaining access to Collective Shout's publicly available audited accounts, in August 2017 Sexpo commenced proceedings in the Federal Court for preliminary discovery under r 7.23 of the Federal Court Rules, contending that:

it did not have sufficient information to decide whether it could establish its possible claim against Collective Shout [because] that largely depended upon whether Collective Shout was acting in trade or commerce when it allegedly published two sets of representations about Sexpo on its website and on various social media platforms.

Sexpo's application sought access to extensive financial information about Collective Shout, including bank statements, employment contracts and legal arrangements with staff and directors.

Given the Court's broad construction of rule 7.23, Sexpo merely had to show that it "may" be entitled to the relief claimed. As the respondent, Collective Shout was only likely to be able to defeat Sexpo's application by demonstrating to the court that the subjectively held belief alleged by Sexpo did not exist, or that there was no reasonable basis for thinking there may be a case for relief. It would not have been enough for Collective Shout to simply show that Sexpo's belief was contestable or even that it was arguably wrong.

However, in April 2018, The Honourable Justice Reeves dismissed Sexpo's application against Collective Shout, ordering Sexpo to pay our legal costs. His Honour found that Sexpo had failed to establish that it held a reasonable belief that it had suffered any loss or damage, including any harm to its commercial reputation as a consequence of Collective Shout's alleged representations.

Therefore, the legal challenge for Collective Shout was to demonstrate to the Court that, notwithstanding the relatively low bar for obtaining an order for preliminary discovery under rule 7.23, the Court should exercise its discretion to refuse the relief sought by Sexpo. Lawyers for Collective Shout submitted that there were grounds for inferring that these proceedings were in effect an abuse of process, arguing that Collective Shout should not be subjected to groundless legal allegations in an attempt to stifle public debate about sexualization in advertising and the need for tighter regulation.

Although the court ruling did not effectively end Sexpo's advertising, the ruling against Sexpo is a significant victory—not just for Collective Shout and our supporters, but for all those who support the rights of children to live free from pornography. The sex industry in Australia has been permitted to effectively target children with advertising for pornography and prostitution in public spaces for too long, and we are more committed than ever to stand up for the rights of children. We continue to lobby against the sex industry and for an overhaul of advertising industry self-regulation, free from the censorship of Sexpo.

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AUTHOR BIOGRAPHY

Caitlin Roper is an activist and writer. She is campaigns manager for grassroots campaigning movement Collective Shout: for a world free of exploitation (www.collectiveshout.org), which works to expose corporations, advertisers and marketers who objectify women and sexualize girls to sell products and services. Caitlin is a founding member and chair of Adopt Nordic WA (<http://www.adoptnordicwa.org/>) to advocate for the Nordic approach to prostitution in Western Australia. She is a speaker and committee member of Reclaim the Night Perth. Caitlin contributed a chapter to *Prostitution Narratives: Stories of Survival in the Sex Trade* (2016). She is currently completing a Masters by Research at RMIT.

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