
FINAL AWARD: GRINGO

Chairperson: C Mamathuntsha

1. On the 12th March 2018, Empire entertainment lodged an appeal in terms of Section 20 (1) of the films and publications Amendment Act of 2009, against the classification of the film/motion picture Gringo (The Film) an 18DLSV. The appellant Empire Entertainment (the appellant) sought a lesser restrictive classification of 16 DSLV.
2. In its grounds of appeal, the appellant argued that the classification committee seemed to have based its decision upon the complex and mature themes presented in a context of a dark thriller and crime drama. Furthermore, the appellant submitted that the classification committee further indicated that the themes of the film would be “psychologically threatening, confusing, distressing, and upsetting an inappropriate for children under 18years.
3. Furthermore in its grounds of appeal the appellant submitted that the classification committee found that the film contained frequent, mild to moderate substance abuse. Frequent story to very strong impact gratuitous language. Infrequent to occasional strong impact scenes of a simulated sexual act and frequent, strong impact, realistic and psychological graphic violence with bloodletting.
4. It is noteworthy to point out that the classification committee reached its final decision that the film be given a classification of 18 DLSV after considering the overall cumulative impact of all classifiable elements and the moral implications this dark thriller will impact on the young impressionable minds under the age of 18years.
5. The appellant argued that the rating of 18 DLSV is overly restrictive and was not properly considered. In other words they gave that this was not the least restrictive classification that could and should have been implored.
6. In conclusion, the appellant argued that the classification committee characterized the film as a dark thriller and crime drama in fact it was a dark comedy crime caper.
7. The appellant submitted that an age restriction of 16 ought to have been applied. They pointed the tribunal to the guidelines to justify their contention for a classification of 16 as follows:
 - 7.1. They stated that the guidelines provide that the material may contain moderate instances of substance abuse if they are justified in context.
 - 7.2. Instances of strong language justified by the context

7.3. Scenes of moderate or occasional strong impact sexually related activity strong impact sexually related activity or stimulated sexual conduct. Strong violence, if it is justified by context this in the main constituted the main points in support of a reclassification of the film to 16 DSLV

8. In support of its argument, the appellant called an expert, Ms. Giada Del Fabbro to share her opinion with the tribunal at the hearing of the appeal. Ms Del Fabbro was introduced to the tribunal as a clinical psychologist with significant experience, in working with adolescents. This was not disputed.
9. The Respondent also filed its heads of argument in reply to the appeal filed by the appellant.
10. For the purpose of this award, it is accepted that the correct classification given by the classification committee was 18DLSV. This was as argued y the Respondent, in adherence to the provisions of section 8 (e0 of the classification governance framework.
11. The Respondent grounds of appeal included the following:
 - 11.1. The committee duly applied itself after reaching their conclusion, reassessed it, re-evaluated it and corrected it.
 - 11.2. The respondent submitted that the film is not a dark comedy caper. Although the film does display attempts at humor, the general impression does not qualify it as a comedy.
 - 11.3. The film can only be qualified as a comedy if it does indeed achieve and execute it as such and the argument of the Respondent is that it does not. The respondent submitted further that when applying for classification of the film, the appellant defined the film's subject or genre as Crime, Drama. Thriller
 - 11.4. The Respondent also submitted that the tribunal should take cognizance of the rating that the film already received in the United States of America. It submitted that the Motion Picture Association of America (mpaa) provide it with a R rating. This, they argued that the film is restricted to persons over the age of 17 is to be accompanied by his/her parent or lawful guardians.
 - 11.5. The Respondent argued that the scope and ambit of the argument has been considerably limited due to the fact that the appellant sought a 1 DLSV classification.

It argued further that the appellant has already concede the story presence of the classifiable elements of substance abuse, strong language, sexually related activity and violence.

The Respondent the submitted that this then sets the very limited boundaries for the argument, in that if any of the classifiable elements of violence and language are found to be very strong, it ends the matter and an 18 age restriction must follow.

It was strongly submitted by the Respondent that for purposes of argument I is the submitted that it is not necessary to convince the tribunal that the film, generally carries sustained elements of strong violence, languages, explicit sexual conduct, and substance abuse.

In a nutshell, the Respondent argued that the film contained very strong language, very strong violence and sexual related activity.

The Respondent decries the use of the word fuck, which it submitted was used as approximate average use of all times. They argued that irrespective of whether this frequent use is in any manner published by the context, it is submitted that it is prejudicial to expose a 16 year old.

The Respondent cited a scene where the Shartto Copley character "Mitch" explains with biblical reference, how Peter, not Judas was actually the real betrayer of Chris. Mitch states that Judas betrayed Jesus once but r4epented and hung himself, yet he is remembered as the ultimate betrayer. What about Peter who betrayed Christ thrice, Mitch asks. Nobody talks about his betrayal fact, he is revered when he double-crossed Christ. He then laughs loudly: "He fucked him!"

With regard to the sexual related activity, the Respondent argued that the story aspect of the film is its continued and sustained central theme that a woman should use her sexual presence and aura to manipulate men so as to achieve her goal or objective.

They referred the Tribunal to Charlize Theron character, Elaine in the film where she plays a promiscuous and sexually unrestricted female who intimidates and influences both her ale opponents with seductive conduct and blatantly indicates that she will give them sexual favors in exchange for succumbing to her request and demands.

At the age of 15 – 17 an adolescent is increasingly concerned about his/her body image and seeks adult leadership roles. The Respondent submitted that there is a real probability that children infatuated with the persona and celebrity of Charlize Theron will interpret this conduct as admirably effective and emulate it.

In conclusion, the Respondent submitted that hearing considered its arguments well as the overall cumulative impact of the classifiable elements 9which they insisted the appellant expressly conceded as being present), they prayed for the confirmation of the initial classification of 18DLSV.

The evidence and analysis presented by both parties. The appellant 's expert, Ms. Fabbro indicated that children in the age group of 16 have a sense of who they are in society. They

can distinguish between what is symbolic and is real. They also know how to self-reflect, meaning reflecting on themselves. They can evaluate their flaws, whether that will be appropriate or inappropriate.

The expert argued that through social development, their identity is pretty much formed, and this includes their sexual identity. Further the expert argued that in terms of statistics; 12 year olds already no longer need a stick if they transgress. At this stage they have already internalized.

The expert submitted that the 16 years old will be able to internalize the impact of scenes of violence and that they will be able to contextualize and be able to see that this is real or not.

The moral of the story is that underdog wins. Further it was argued that the scenes will not cause moral harm to 1years olds and below, in other words it would not diminish the values already taken. The appellant further, through its expert submitted that the classifiable element will not pose the threat to 1years as 12 years old teenagers have already experimented with sex at this age.

In other words the expert submitted that children of the age group of 1 will not be traumatized, nothing will make them feel violated and that in terms of their cognitive development, children are able to distinguish between fantasy and reality. She concluded that her testimony by submitting that the scenes with blood do not justify 8years classification. She referred the Tribunal to images in news which is nothing new in terms of the film.

The expert report, evidence was accepted in the record and marked "A"
The expert under cross-examination conceded that the nature of the language is open for argument.

In summarizing her evidence, she submitted that the sexual related activity, the violence and the language were tolerable to a 16 years old. She submitted further that there is a positive outcome at the end and that the protagonist does not kill anyone. This protagonist end up with a 2million insurance payout.

It was also submitted by the appellants that the movie cannot do harm in what is already there in the public domain. That kids are exposed to this kind of content. This would not undo the moral question.

In its argument the Appellant asked for consistency in the application of the guidelines. They submitted that there is no actual taking of the drugs, and that it's only drinking which is

moderate and not glorified. They argued that the 18 rating is excessively restrictive. In fact they referred to one character who was jailed for drug dealing.

The Respondent argued that the Woolf street received a lesser rating on DVD after a public outcry and that there needed to be consistency. They argued that in making decisions, the tribunal should be guided by guidelines, which is what the classification committee did. They argued that the classification committee found the material to be inappropriate.

They argued that the language was of a very strong nature, whereas the appellants through their expert did not concede to this. However the expert did concede that a 6years old is likely to be influenced by the conduct of Charlize Theron and that the film does not have a positive outcome. They argued that there was usage of very strong language and that there is no reference to comedy which is a dark comedy!!

DECISION OF THE TRIBUNAL

The tribunal after listening to arguments and submissions from both parties arrived at a decision to reclassify the film Gringo to 16DLSV and undertook to furnish its reasons.

Taking into totality of the submissions made, the Tribunal did not find any reason to confirm the classification of 18 DLSV initially given by the Respondent, through its classification committee.

We are satisfied that applying the guidelines in terms of section 3 (3), the classifiable elements are mild to moderate.

We wish to thank the legal representatives of both parties, Mr. Groenewald for the Respondent, Mr. Rosengarten and Mr. David Feinberg for the Appellant on behalf of the tribunal, the helpful assistance that they provided in this appeal.

DATED AT JOHANNESBURG ON THIS THE 12TH DAY OF April 2018.

Nonkoliso Sigcau

Lutendo Joy Malada

Muke Nondunduzo Kheswa

Mariko Buffel

Sizwe snail ka Mtuza