

3/2005

Before the Film and Publication Review Board.

In the matter between:

The Film and Publication Board.

and

Nu. Metro.

Award.
Re: Fantastic Four.

Professor K Govender

Introduction.

1. This film is based on the characters originally created as comic heroes by Marvel Comics. The four are astronauts and scientists who plan a mission into space to harness the energies and examine and the properties of an impending cosmic force. The cloud appears prematurely and takes the four and their sponsor by surprise. They come into contact with the cloud, are exposed to radioactive energy and this fundamentally alters their DNA composition. Each of the four acquires unique powers and capabilities. Reed Richards acquires the capacity to extend, expand and elongate his limbs as if they were constructed of rubber, Sue Storm is able to make herself invisible, Johnny Storm is able to emit flames and become a fire ball while Ben Grimm is transformed into a giant rock-like character of immense strength. Each of these characters use their powers positively in the fight for good. With the exception of Ben, they are all able to control and direct the exercise of their powers. The sponsor of the mission, Victor von Doom, is also exposed to the radioactive energy and is slowly transformed into a metallic person. He uses his energy and power in a

destructive manner to achieve his quest for power and either destroys or seeks to destroy those in his way. There is a titanic duel between the heroes and Victor as they seek to defend themselves.

2. On the 28th June 2005, a three person classification committee assigned a restrictive age classification of 13 to the film. The process of classification requires each examiner to consider the decision separately and then the panel must attempt to reach consensus. In this case, two of the examiners opted for a restrictive age classification of 13 and the third examiner was of the opinion that an age classification of 10 was appropriate. After discussion, the examiners settled on the classification of 13. In support of their conclusion, the Chief Examiner stated:

The film contains scenes with violence, though in context in line with story line, which has the potential to upset younger viewers. The theme is also not readily understood by younger viewers and may confuse such viewers. Seeing people in the films context being hurt has the potential to impact and confuse young children.

Submissions made by the Examiners and by Nu Metro.

3. Nu Metro appealed against the classification decision, arguing that the film is of the science fiction genre and that the violence is obviously not real and that it is in context of a story line. The violence, according to Nu Metro, is mild and not prolonged and further they contended that the negative consequence of violent conduct is depicted. In their written submissions, Nu Metro submitted that a PG or 10M classification would be appropriate in the context.
4. Mr. Iyavar Chetty made written submissions behalf of the Board. He contended that the classifiable elements in the guidelines for the "PG",

“10”, and “13” overlap noticeably and that subtle differences exist between them. He argued that the classification committee applied its mind to the various guidelines and reached a conclusion that a restrictive classification of 13 was appropriate. He concluded that the decision of the classification committee was reasonable.

5. At the hearing before us on the 16th July 2005, the classification committee was represented by Mr. G.T Avvakoumides and Nu. Metro was represented by Mr. Mark Rosin of Attorneys Rosin, Wright and Rosengarten. We express our appreciation to all those who appeared before us and to those who submitted written representations.
6. An assessment of the written reasons of the classification committee clearly indicated that the violent content of the film was the main reason for its conclusion. During his argument, Mr. Avvakoumides contended that the themes of the film may confuse children and that a 13 restriction would be most appropriate. He referred to certain themes which permeate the film such as that of human greed for power and wealth, the breakup of the relationship between Ben and his wife and poignancy of her placing her wedding ring on the floor in rejection of his distorted physical appearance. These themes, he contended could confuse and upset younger viewers. In addition he referred to the tension and menace created by the storm, the tension between the parties and the scenes involving the killing of the chairperson of the board, the doctor and the doorman/guard. In response to questions from members of the board, he however conceded that a classification of 10 may also be appropriate in respect of this film.

7. In response, Mr. Rosin argued that there was an obvious confusion in the minds of the examiners between action and violence. In many of the fast paced scenes, the audience is treated to gripping action sequences and according to Mr. Rosin these should not be confused with violence. He argued that the scenes of violence that did occur were fleeting, with very little or no aftermath being shown. There was little or no gore in the scenes. He argued that the test was one of tolerance and that children of 10 and younger would be able to contextualize the scenes of violence and would not be disturbed by them. He also argued that in most countries, this film had been similarly classified as the X-Men series. The last X-Men film received a 10M classification in SA. He concluded that a classification of PG or 10M would be appropriate.

The Relevant Legal Principles.

8. The relevant provisions of the Film and Publication Act 65 of 1996 which provides for the classification of films of this nature are sections 18(4)(a) read with Schedule 8.

Section 18(4)(a) provides:

The classification committee shall examine a film referred to it in terms of subsection (2) and shall with reference to Schedules 6,7 and 8, read with Schedule 9 and 10, classify that film-

(i)...

(ii) ...

(iii) by imposing any restriction in accordance with schedule 8;

Schedule 8 provides:

An age restriction may be imposed only if the classification committee or the Review Board is of the opinion that, judged within context, it is necessary to protect children in the relevant age group against harmful and disturbing material in the film.

In the appeal regarding the film *Hostage*, we stated.:

In our previous awards, we have urged Classification Committees to start from the least restrictive classification and move progressively to more restrictive classifications. The more restrictive classification should only be adopted if a decision is made that the less restrictive ones are inappropriate. Classifiers are appointed from various segments of the South African community and bring with them their valuable life experiences. However, the decision to classify is not a subjective one based on life experiences alone. The decision must be made in terms of the Films and Publication Act¹, the guidelines promulgated in terms of the Act, and by reference to our experiences.

9. The guidelines promulgated in terms of the act inform and assist the exercise of the discretion as to what constitutes harmful and disturbing material. The guidelines identify classifiable elements such as the theme, language, use of drugs, prejudice, nudity, sex and violence. All the elements, to the extent that they are relevant to the film, must be considered collectively before a decision is made. In this film the relevant classifiable elements are that of violence and the nature of some of the themes. In this context the relevant provisions of the guidelines are as follows:

¹ . Films and Publication Act 65 of 1996 as amended.

The classification guidelines in respect of a restrictive age classification of 13 provides:

Theme: The film may deal with a variety of themes, including adult themes or social and psychological issues. Themes are handled sensitively and in a manner appropriate to the development of teenagers. Outcomes are generally positive and viewers aged 13 years and older will be able to understand them.

Violence: Scenes of realistic and intense violence should be brief and infrequent. Such realistic violence should be interrogated in a pro-social manner and shown as negative, hurtful, wrong and destructive. ... Violence should neither be glamorised nor presented as a way to solve conflicts.

Application of the legal principles.

10. We agree with the contention that there should be a separation between scenes of action and scenes of violence. However it must be noted that action scenes may sometimes be deemed to be disturbing to children. The contact with the cosmic cloud, despite the sense of impending menace, the scene on the bridge which starts with Ben attempting to prevent a desperate man from committing suicide and which leads to a chain of events culminating in the fire engine being rescued from its precarious tilt and some of the stylized fight scenes may all be classified as action as opposed to violence. These will entertain and not disturb children. There are however a number of violent scenes.

- The killing, in revenge, of the chairperson of the board by Victor.
- Victor's murder of the doctor to prevent him disclosing his condition.
- The killing of the doorman/guard by Victor.

11. But in our opinion, these scenes and others could not properly be described as intense violence. There was very little, if any, gore and blood and the scenes of violence while not being graphic were fairly realistic. They were also fleeting and brief. In the instance, of the banker, a neat hole was blown into his chest, and this sort of incident may be anticipated in a comic science fiction. We were accordingly of the view that assigning the film a restrictive classification of 13 on the basis of the violent content was inappropriate. Hence our finding that the decision of the classification committee had to be set aside. As stated earlier, we formed the impression that during argument, members of the classification committee themselves may have come to the conclusion that a restrictive age classification of 13 was inappropriate for this film.

12. We then had to consider an appropriate classification for the film. Nu Metro submitted that a PG or 10M would be adequate in this instance. Each film has to be considered on its merits, but if there is proper application of the law regulating classifications, then there will be a measure of consistency. The consequence of Nu Metro's submission is that a child of seven accompanied by an adult would be permitted to watch this film. Implicit in the request by Nu Metro that the film be classified 10M is the acknowledgment that parents should be alerted to the concern that the film may contain scenes that are unsuitable for children under the age of 10 to watch without adult supervision and reassurance.

13. The guidelines regarding themes and violence in respect of PG state:

No themes are treated in a way that threaten a child's sense of security or well being. ..

There may be brief scenes of low-impact violence but no prolonged or extreme images. .. There may be mild threats, menace or suspense. Scenes of strong violence occur only in clearly contextualized comic, historic, fantastical or natural disaster settings.

We agree with the examiners that the themes are of a nature that may confuse younger viewers. The themes of greed for power and wealth coupled with the rejection of human beings because of physical appearance coupled and the manipulation of individuals may be a source of confusion and concern. In addition while the heroes are based on comic characters, they are depicted as real persons in the film. The scenes of violence described above while not intense are realistic. We are also concerned that children, under the age of 10, may be confused and disturbed by the scenes in which flames emanate from and sometimes engulf the body of Johnny Storm. It is difficult to predict with any measure of confidence how very young children would react to this. Some of the themes, the fairly realistic scenes of violence and the flames emanating from Johnny Stone convinced us that neither a PG classification nor a 10M would be appropriate. A 10M classification is resorted to in instances where the consequences of the harmful or disturbing scenes can be effectively counteracted by the presence of adults. Whether this is possible will depend on the nature of the scenes themselves. Ultimately, one must be satisfied, if a 10M classification is to be assigned, that the film if viewed with an adult will not be disturbing or harmful to very young children. Given the nature of the themes, the scenes of violence and some of the other concerns identified earlier, we are of the opinion that it is inappropriate for children under the age of 10, even if accompanied by adults, to view this film as it may disturb them.

14. The guidelines in respect of themes and violence in respect of a restrictive age classification of 10 provides:

Themes may be complex but outcomes reinforce positive social values. The overall message is reassuring to a child's sense of security and well-being.

Violence should be mild and form an integral part of the plot or character development. There are no prolonged or extreme images of violence, such as close-up and graphic shots of people suffering either physically or emotionally as a result of violent acts or accidents.

The scenes of violence are brief, but realistic and are integral to the plot. There are no graphic depictions of people suffering. The themes are complex, but there is a measure of reassurance as good triumphs over evil. Having carefully assessed the issues in the light of the guidelines we are of the opinion that neither a restrictive classification of 13 nor a PG or 10M classification is appropriate. Having concluded that the film may be disturbing to children under the age of 10, we are of the opinion that a restrictive age classification of 10 is appropriate for the film, *Fantastic Four*.

Conclusion:

- 1. The decision of the classification committee to assign the film, *Fantastic Four*, a restrictive age classification of 13 is set aside.**
- 2. The film, *Fantastic Four*, is assigned a restrictive age classification of 10.**

Concurred by

Rev. Mike McCoy.

Ms. Rene Smith.

Adv. Ronald Lessick.

Mr. Jack Phalane.

Dated: 16th July 2005