

Before the Film and Publication Appeal Tribunal

In the matter between:

3/2014

Ster-Kinekor Entertainment

And

Film and Publication Board

Award

Appeal in respect of the film *Captain America: The Winter Soldier*

Background and context

On the 13th of March 2014, a three-person classification committee, by a majority vote, assigned the film *Captain America: The Winter Soldier* ('the film') a restrictive age classification of 13(V). The dissenting classifier, Ms NoziphoMalambo, was of the view that a restrictive classification of 10-12PG would be adequate. Her view was premised on the conclusion that, while the scenes of violence were frequent and prolonged, they would not be threatening to children above the age of 10, as the violence was stylised. Mr NiqMhlongo and Mr Dave Ewart, in their majority report, justified the classification of 13(V) on the basis that the film deals with complex and mature themes, and that the violence depicted in various scenes is prolonged and can be described as having a mild to moderate impact. They accept that there is no portrayal of gore or bloodletting in the various scenes, but were of the view that some of the scenes might be misleading, depressing, and disturbing to children under the age of 13.

In their grounds of appeal, Ster-Kinekor submitted that, as the impact of the violence was described as mild to moderate, it would be non-threatening to children aged 10 and above.

They acknowledged that there were some limited mature scenes, but were of the view that any concerns arising from these would be offset by the reassuring presence of an adult. The appellants emphasised that very little bloodletting was portrayed in the various scenes of violence. Finally, they supported their conclusion that a restrictive age classification of 10-12PG would be appropriate by reference to other titles such as *Thor 2* and *Captain America*, which received similar classifications. They contended that this film was similar in content, and should be classified similarly.

On the 29th of March 2014, the Appeal Tribunal viewed the film and heard representations from the various parties. We express our appreciation to NiqMhlongo for the FPB and Ms Scott on behalf of the appellants for the representations made. In order to enable the film to be released immediately, we handed down a ruling on that day, and indicated that we would provide reasons within 14 working days. These are our reasons.

Description of the film¹:

This film is a big-budget blockbuster starring among others Chris Evans, Samuel L Jackson, Scarlett Johansson, and Robert Redford. The plot is complicated and nuanced, and requires reflection and thought to appreciate its various twists and turns. The Marvel Comic hero Captain America (played by Chris Evans) resides in Washington DC and is employed by S.H.I.E.L.D., an espionage agency. He, Natasha Romanoff (Scarlett Johansson) and other members of the agency's team are sent to rescue hostages held aboard a vessel owned by S.H.I.E.L.D. During the rescue operation, Steve Rogers finds Natasha Romanoff extracting data from the computers of the ship for Nick Fury (Samuel L. Johnson), the director of S.H.I.E.L.D. When Rogers confronts Fury about this, he is informed about 'Operation Insight', which is about the use of three helicopters to eliminate perceived threats to their programme. There is a direct clash of ideologies as Rogers, the World War 2 veteran who does not age, finds the pre-emptive strike against perceived threats to be unjustified and unnecessarily excessive.

¹http://en.wikipedia.org/wiki/captain_America:_The-Winter_Soldier#Plot

Fury is subsequently ambushed by assassins led by the Winter Soldier. He escapes to Rogers' apartment and hands him the disk containing data that Romanoff extracted from the ship's computers. He is later gunned down by the Winter Soldier and appears to die in the operating theatre. Rogers is declared a fugitive as he refuses to provide the required information about Fury to Alexander Pierce (Robert Redford). Rogers teams up with Romanoff, and from the data on the disk they are able to discover a secret bunker in New Jersey. Here they discover an operation within S.H.I.E.L.D. called Hydra, which seeks to ferment disorder and chaos in the world with the objective of getting people voluntarily to surrender their freedoms to counteract the chaos. This has been in operation since the end of World War 2; and the founding premise was that attempts to control the world had failed because people's freedoms were taken away without their consent. If people voluntarily surrendered their freedoms to counteract chaos, then world control could be established.

Rogers and Romanoff, with the assistance of Sam Wilson, discover that an algorithm has been developed that enables 'Insight' to identify individuals who might be a threat to Hydra. The idea is that the helicopters will scan the globe and, guided by satellites, will eliminate all individuals perceived to be a threat. On the way to the S.H.I.E.L.D. headquarters, the protagonists are attacked by a group led by the Winter Soldier whom Rogers recognises as his World War 2 friend, Bucky Barnes. They team up with Fury, who had faked his death, and seek to prevent the helicopters carrying out their murderous plan. They confront Pierce at a meeting of the World Security Council; Fury kills Pierce, and a massive struggle ensues between Rogers and the Winter Soldier as the former tries to replace the chip on board the helicopters. The helicopters then collide into each other and the crisis is averted. During the credits we learn of scientists experimenting and creating superhuman persons with telekinetic powers.

Appraisal of the arguments, and reasons for the decisions

Ms Scott accepted that the themes were of a mature nature, but submitted that this was an action adventure, and that if children aged between 10 and 12 were accompanied by adults, any sense of insecurity would be offset by the reassuring presence of adults. She further argued that the violence was not actually portrayed but rather was perceived, and that the

menace was directed at Captain America and not at civilians. She also submitted that there were positive themes such as the importance of team-work, the condemnation of the abuse of power, the triumph of good over evil, and the need to be the best you can. She also argued that the *Iron Man* films had been given a restrictive age classification of 10, and submitted that this film should have a similar classification. On this last point, we have stated previously that each film has to be appraised and classified on its merits, and classification decisions of prequels and films of a similar genre do not operate as precedents. At most, cognisance can be taken of these decisions, together with all the other relevant factors, if there are similarities, to ensure consistency of decisions.

Mr Mhlongo in justification of the decision argued that the themes were difficult and complex, that the violence portrayed was of a realistic nature, and that the film might be misleading, depressing, upsetting, disturbing, and imitable for children under the age of 13. He also described the acts of violence as frequent, and pointed out that the sound that accompanied these acts accentuated their impact. He also listed the various scenes that had caused the majority of classifiers to determine that a restrictive age classification of 13 would be most appropriate in this matter.

We indicated in our decision that we were of the view that the appropriate classification was 13 V. The objective of a restrictive classification, in so far as it is relevant to this film, is to “protect children from exposure to disturbing and harmful material...”². The Appeal Tribunal is required by the Guidelines³ to have regard to “the context, impact and the release format of the material”. Neither the full impact of the violence nor blood and gore were depicted in the various scenes. The genre of the film is also relevant in the assessment as it relates directly to context. This film is anchored in the adventures of Marvel Comic hero ‘Captain America’. We know that, despite being a World War 2 veteran, he does not age, appears indestructible, and is able to use his shield to remarkable effect both in warding off attacks and as an offensive instrument. There are also scenes – such as when he jumps out of a helicopter without a parachute – that underscore the unrealism of the film. Captain America⁴ is the alter ego of Steve Rogers who was injected with an experimental serum to

²Section 2 of the Films and Publications Act 65 of 1996 (as amended).

³ Government Gazette of 8 October 2012 No. 35760.

⁴http://en.wikipedia.org/wiki/Captain_America

aid the US war effort in World War 2. This film depicts the adventures of Captain America in a modern age having to deal with the challenges confronting modern society. The unrealism of the context also has to be considered when deciding on an appropriate classification.

The issue that confronted us was whether it would be appropriate for a 10-or 11-year-old, accompanied by an adult, to watch this film. The lack of gore and the fantastical backdrop would suggest a less restrictive classification. However the realism, menace, and impact of a number of scenes point in the opposite direction. More specifically, we have to determine how to classify a film appropriately when there are realistic scenes of considerable impact and menace depicted against the backdrop of unrealism.

Scenes of menace and tension permeate the entire film, and the effect is that some parts will cause apprehension and concern, especially to younger viewers. Some examples are the following:

- The kidnapping scene in which the hostages are directly threatened with death, and weapons are pointed at them with obvious intent to cause them harm. This scene involves a heightened sense of apprehension accentuated by a band of mercenaries determined to achieve their objectives;
- The car chase in which the assailants attempt to murder Nick Fury with high impact collisions accompanied by accentuating sound effects. There are repeated collisions, and the action is realistically portrayed;
- The 'reconditioning' of Bucky Barnes during which he appears to be tortured. We hear him screaming in agony as a consequence of the torture;
- Weapons pointed with menace. In a number of instances weapons are used realistically and threateningly;
- The throwing of the double agent off the balcony, even though the full impact is mitigated a few moments later when he is plucked up by the Falcon (Sam Wilson's alter ego). There is a real sense of anguish when he is simply thrown off the top of the building for failing to co-operate;
- The shooting of Alexander Pierce's housekeeper is done in a calculated and cold manner in order to silence her;

- The scene in the lift, when the assailants, in small numbers, enter the lift at different floors and the viewer anticipates an imminent attack. The scenes leading to the fight in the lift are permeated with threat and the expectation of the imminent attack.

The technique used was to create scenes that have considerable impact without gore or blood being unduly depicted, and then subsequently satisfactorily resolving the heightened anxiety with elements of unrealism. Throwing one of the agents over the balcony when he does not supply the required information might be deeply upsetting to a 10-year-old; but that is resolved soon afterwards when he is plucked to safety by the Falcon. Similarly, we witness an intense attack on the car driven by Nick Fury, but he manages with the aid of fantastical technology to escape. The same occurs in the scene when Rogers is attacked in the lift. There is a deliberate and meticulous build-up of tension and menace, and the scene then explodes into the fight scene in which Steve Rogers prevails despite impossible odds.

We thus have highly realistic scenes that could cause harm; but the issues are resolved in a manner that mitigates the possible harm. Even though these various scenes are resolved in a manner that will not be unduly harmful or disturbing to children, regard must be had to the effect that these scenes might have on children prior to the satisfactory resolution. The greater the intensity and impact, and the longer the scene before issues are resolved, the more justifiable it is to impose a more restrictive classification. It is necessary to take cognisance of the frequency and prevalence of these scenes.

As pointed out earlier, there were a number of these scenes of heightened impact, menace and anxiety, and our impression was that these scenes occurred frequently and were often prolonged. Both the attack on Nick Fury in his car and the scene in the lift were prolonged. In our assessment, similar scenes occurred throughout the film.

The scenes halfway through and at the end of the credits hint at a sequel; but they also show that those seeking world domination have not been entirely defeated. We are unsure what impact these somewhat complicated scenes would have on children; hence our decision to regard these as a neutral factor.

The film has very positive messages. It warns against the abuse of power and against the unjustifiable use of force as a pre-emptive tool against those who may be perceived to be

threats. It also demands that powerful bodies be accountable and subject to scrutiny, or else the power that they exercise will be abused. Finally, it trumpets the message that good triumphs over evil. It is also an exceptionally entertaining film with a star-studded cast. The classifiers were of the view that, as the film contains complex and mature themes of “kidnap, betrayal, lies, power, greed, rescue, national security, loyalty, classified intelligence and backstabbing”, it may be unsuitable for children under the age of 13. We do not share this view, as the main themes of the film are overwhelmingly positive and convey the message that greed, lust for power, and betrayal ultimately succumb to those committed to doing good.

In summary, this is a film with positive social messages set against a fantastical backdrop, but that includes a number of scenes that are intense and are replete with menace and anxiety. The impact for the most part is moderate, but sometimes strays beyond the boundaries of being moderate. These scenes were satisfactorily resolved, but they were often long, and while the issues remained unresolved they might be distressing to younger children aged 10 and 11. Assessing all the scenes cumulatively in the context of the film, and taking cognisance particularly of its intensity in terms of the anxiety and menace in some of the scenes, we were of the view that the film might be disturbing and harmful to 10- and 11-year-olds even if accompanied by adults. It is for these reasons that we concluded that a 10-12PG classification would not be appropriate. The next classification available is a restrictive age classification of 13; hence our decision to assign the film a restrictive age classification of 13. We thus affirm the conclusion reached by the classifiers in this matter, but for different reasons.

Order:

- 1. The film ‘*Captain America: The Winter Soldier*’ is assigned a restrictive age classification of 13(V).**
- 2. No person under the age of 13 is permitted to view the film.**

Concurred by:

Adv. D Bensusan
Ms H Devraj
Ms P Marek
Revd M McCoy