

APPEAL TRIBUNAL FOR THE FILM AND PUBLICATION BOARD
(HELD AT SANDTON, JOHANNESBURG)

Case No:

In the matter between:

UNITED INTERNATIONAL PICTURES

APPELLANT

And

The Film and Publication Board (FPB)

RESPONDENT

AWARD: HOW TO TRAIN YOUR DRAGON (APPEAL DECISION)

Appeal heard on 17th February 2019

Decision: 18th February 2019

For Award Reasons Dated:

Chairperson: Christopher Mamathuntsha

Appellant Represented by: **Rosin Wright Rosengarten Inc. - ATTORNEYS**

Respondent Represented by: **Mr Pandelis Gregoriou FILMS AND PUBLICATION BOARD – LEGAL COUNSEL**

1.

BACKGROUND AND INTRODUCTION

On 09/01/2019 The Classification Committee viewed the above film and assigned it a restrictive age rating and consumer advice of 7-9 PG V. respectively. The applicant was aggrieved by the classification, contending that a less restrictive classification of PG.V. was more appropriate.

This is an Appeal before the Films and Publications Appeal Board. Presiding officer is Appeal Tribunal Board Members and Chairperson Chris Mamathuntsha. The members formed a **quorum** and the Appeal was ripe for hearing. Both parties confirmed that they had no objection with the constitution and sitting of the Appeal Tribunal as is.

The film is the third and final instalment in the “How To Train Your Dragon” trilogy produced by DreamWorks Animation. It was preceded by “How To Train Your Dragon” in 2010 and “How To Train Your Dragon 2” in 2014. It features a host of well-known voice actors including Cate Blanchett, Jonah Hill, Kit Harington, Kristen Wiig and Gerard Butler. It is an action-packed fantasy adventure film which has entertainment value and animation and visual effects.

2.

The Appeal

The Appellants sought to appeal the decision of FPB in rating the Film: “How to train your dragon” and will do so by introducing Heads of Argument and engaging the services of an expert. The intention to use an expert was indicated in time and the respondent indicated no objection to the matter.

The Appellants note that the decision by FPB was not reached based on the classifiable elements of substance abuse and sexually related activities, and that the Classification committee found that there were frequent low impact scenes of substance abuse and “affection” which they (The Appellants) contends that the rating of 7 – 9 PG V is overly restrictive and appeals for a rating of PG V.

APPELLANT’S SUBMISSIONS

3.

The Appellant submitted that the Classification Committee (CC) of the Films and Publication Board (FPB) incorrectly classified the Film ***How to train your dragon*** an age restriction of 7-9 PG V. The Appellants used the following as the basis of their argument

Constitutionality

2.1. A decision to restrict viewership is tantamount to a curtailment of the right to freedom of expression, in the context of cinema releases, the rights of children to watch films is restricted.

2.2. In terms of the Constitutional principles set out in Section 16 as clarified in the “Rabbit Proof Fence”

2.3. The trite principle is that liberty and not restriction should be the basis of all findings.

2.4. The principle to be taken into account when adjudicating a film is one of tolerance and not taste.

Consistency

2.4. In addition to the issue of Constitutionality, UIP submitted that the decision of the Classification Committee is inconsistent with other decisions of similar impact

2.5. While UIP recognised that the Tribunal is not strictly bound by its previous decisions or those of the Classification Committee, that the Tribunal should be guided by these decisions for the sake of consistency. UIP also submitted that consistency and the rule of law should apply to the Tribunal and that if the Tribunal wishes to depart from those principles, it must explain why it is doing so.

2.6. UIP concludes that Failure to do this, will result in uncertainty and unpredictability into the decision-making of both the Tribunal and the Classification Committee.

Merits

2.7. The starting point of an enquiry into a film’s classification is the principle that all classifications must take “context, impact and release format of the material” into consideration.

2.8 Section 3(2) of the guidelines direct that, when considering context, the following factors must be taken into consideration:

2.8.1. the expectation of the public in general and

2.8.2. the target market of the material

2.8.3 the theme of the material;

2.8.4. the manner in which the issues are presented;

2.8.5 the literary, artistic, dramatic or educational merit of the material

2.8.6 the apparent intention of the filmmaker as reflected in its effect

2.9. The Classification Committee 'correctly' identified many prevailing themes in the film. These include: (a) Team work and collaboration; (b) Love (c) Friendship (d) Fighting for a cause; (e) Love conquering evil; (f) Bravery and heroism; and (g) Pro-social themes such as preservation of species. This according to the Appellants favours their argument.

Classifiable Elements

Sexual Related Activity

The Appellant argues that the Classification Committee did not appear to have relied on this classifiable element in justifying its classification. The CC concluded that the material referred to would not be distressing, upsetting and confusing to younger viewers, but recommended parental guidance. The CC's finding is in line with a PG rating, argues the Appellants and pointed out that this classifiable element, as presented in the film, meets the criteria for an all ages classification.

Violence

The Appellants notes that the Classification Committee referred to "low to mild impact violence" and the frequency of the violence. It distinguishes the classifiable element of violence in PG and 7-9PG restrictions as characterised by low impact violence and the latter as characterised by low to mild impact violence. Arguing that the determinative feature providing clarity on the difference between low and mild impact violence is that of realistic and unrealistic violence. And that the Classification Committee conceded that the violence in the film is "unrealistic and fantastical" and is "depicted as cartoon or animated violence with no injuries or bloodletting".

According to the Appellants none of the parties involved appears worse as a result of the action, and none suffers any ill effects." And that the "violence" was: "depicted as cartoon or animated violence with no injuries or blood-letting"; "it has a low sense of threat and menace" according to their heads of argument

Substance Abuse

In as far as the Substance Abuse the Appellants argued that the scene that the Classification Committee refers to in its decision is an isolated scene of implied substance abuse “namely the drinking of beer by one of the Vikings at Hiccups camp”.

4.2. In their argument the Appellants states that “substance abuse” in terms of the guidelines, means “the sustained or sporadic excessive use of substances”. And that an incident depicting a beer being consumed by an adult Viking does not fall within that definition.

Language

The word “butt” and the sentence “I feel like the first screw up” in the film were considered by the Classification Committee to contain “strong” language. Yet in other undertakings the Classification Committee contradicts itself by saying the impact of the language is low, this then the Appellant finds not to be consistent especially the CC has concluded that no consumer advice is recommended.

4.

EXPERTS REPORT

The Appellants led the evidence of the expert witness through the report, sourced the expert’s opinion on the film and considered certain behavioural traits and developmental aspects of children. She also confirmed viewing the film “How to train your dragon”. The expert, Dr Lizelle de Wee, based her opinion on the following and as led by the Legal representative of the Appellant Mr Rosengarten.

Matured themes

The expert indicated that in her opinion the matured themes in the film were incorporated and interspersed with themes of love, victory, loss, rescue, relocation, peace and harmony. She further alluded that the themes of capture and confrontation were harmonious and light in their presentation in the film. Dr de Wee further argued that the context of confrontation in the film is purposeful, moral and short-lived and that it constituted defending behaviour in support of good and justice, rather than casual application of confrontation (She referred to Coyne et al., 2017)

Dr Lizelle de Wee further mentioned that previous studies concur with her argument and that it has been proven that viewing pro-social material in the media has been related to increased pro-social behaviour in children, adolescents and adults

Considering the individual development of preschool children, if it is assumed that children under the age of 7 will be distressed, then it would not account for a child who is naturally aggressive. Dr de Wee mentioned in her report a previous study (Johansson & Hannula, 2012) to have indicated a correlation between the moral reasoning and strategies of children's favourite superheroes and their own moral reasoning. The expert further argues that in the real life context where South African children

from as young as pre-school are exposed to actual aggression through bullying, physical discipline, punishment and safety threats, the animated film then provides an opportunity for learning and meaning making

Reality versus Fantasy

Dr De Wee states that the theorist Piaget postulates that children between the ages of 2 – 7 years have the capacity for symbolic thinking and make-believe. Therefore it can be expected that a pre-school child would have the capacity to grasp the reality that symbol-like dragons are mystical and unreal. The expert therefore argues that children at pre-school age would have capacity for meaning-making.

Impact of Format

It was argued in the expert report that the animated film has the potential to enrich the children viewing the film through aiding visual perception development. Dr De Wee states that children watching the film will have simultaneous sensory experience.

Transferability and Local Content

The expert in her report states that at pre-school age, the average South African child in rural, peri-urban and urban including rural areas would have already encountered actual imagery of poverty, homelessness or deprivation. Dr De Wee therefore argues that the hypothetical

film portrayal of prosocial defending behaviour (Coyne et al., 2017) is justified in the film to overcome animosity through acts of goodwill and compassion with the innocent dragons

Parental Guidance

The expert concludes that by rating the film PG it will give the parents the agency over the capacity of their children and so should be allowed to make that call

5.

Respondent's Submission

Assessment of the film

This is an animated film portraying a protagonist who directs his fellow villagers to save the dragons from a life of slavery by freeing them from captivity and relocating them to a safer village. The antagonist is determined to kill all the dragons

Themes

The Respondent concedes that the film does contain themes of entertainment and educational value but identifies the themes of the film to be complex and mature. In particular the Classification Committee identified the themes of revenge and deprivation of liberty through the incarceration of dragons to have a potential to distress , confuse and upset the younger viewers

Classifiable Elements

The following classifiable elements were identified by the Classification Committee of the FPB

Substance Abuse

According to the Classification Committee, substance abuse occurred infrequently and it is of low impact hence no consumer advice was provided for the element

Language

The Classification Committee of the FPB determined that the use of strong language in the film “How to train your dragon” is infrequent and of low impact. Furthermore the Classification Committee states that the use of such language is justified within context and is necessary for character development. The Classification Committee of the FPB thus found no need to provide a consumer advise for the language in the film

Sexually Related Activities

The Classification Committee of the FPB acknowledge the fact that the scenes of sexually related activities only relates to the portrayal of affection and according to the Classification Committee. These scenes cannot be seen to be upsetting, distressing and confusing to the children. This therefore did not warrant a consumer advice as per the Classification Committee

Violence

The Respondent places on record that the Classification Committee of the FPB determined that although the film portrays violence in an unrealistic and fantastical fashion which is depicted in a cartoon/animation with no injuries or bloodletting, that it is frequent and portrayed at a low to moderate impact and warrant a consumer advise and an age restriction.

The scenes warranting a consumer advise according to the respondent are the following:

- ✚ Grimon’s pursuit of Dragons
- ✚ Sword fighting between Hiccup and Burke
- ✚ The punching of one villager at a meeting
- ✚ Numerous attacks and confrontation preceding the rescue of dragons
- ✚ Hiccup and Astrid are attacked and chased away by dragons
- ✚ Dragons fight with electric lights
- ✚ The frequent verbal reference to violence when Grimon says “I am in the business of killing dragons...”

The Respondent argues that even though the scenes of violence are mostly fantastical and unrealistic due to the existence of the dragons, the scenes are realistic violence and therefore accurately falls in the age Rating of 7 – 9 PG with a consumer advise of Violence

It is further the view of the respondent that due to the release format of the film being in a theatre context, that the sound and violent scenes would be accentuated and therefore be distressing, disturbing and emotionally harmful to viewers younger than 7 years

The Respondent further considered the social learning theory of Albert Bandura which states:

- ✚ Children's behaviour are learnt through observing and role modelling
- ✚ Children imitate behaviour that reap rewards
- ✚ Children's behaviour that are rewarded become adapted behaviour
- ✚ Children who are exposed to anti-social behaviours especially violence are more likely to become desensitised in life

Furthermore the respondent quoted Piaget's theory of developmental stages which states:

- ✚ At concrete operational stage (7 – 11 years) children begin to develop clearer methods of thinking
- ✚ At this stage they demonstrate logic, concrete reasoning and realise that their own thoughts are unique
- ✚ A 7 year old has fundamentally changed from when s/he was 2 years

In Consideration of the target market, themes, manner of presentation, merits of the film, intention of the filmmaker and the impact of the classifiable elements, the respondent re-confirms the determination of the CC of the rating and consumer advise of 7 -9 PG V.

The Award

The Appeal's Tribunal of the FPB viewed the film on the day of the appeal and set for the appeal. Having considered both the heads of argument of the Appellant and the Respondent, including the report and presentation of the expert, the Tribunal concluded as follows:

1. The argument of the applicant that a lower classification was previously given to films with a similar genre is unrealistic as the film under review may bears some resemblance to other previous films which have received a classification of P.G. Past classifications may not serve as a precedent for future films with similar genre. The film must be judged on its own merit. While consistency is ideal but it is not a determinant in a rating. Merits of a film determines its individual rating
2. The scenes of violence specifically mentioned in the respondent's submission paragraph 6.9.2 warrants the rating of a low to mild impact. The expert witness did not provide good substantive evidence on factors that would mitigate the impact.
3. One of the guiding principles is that all decisions must consider context, impact and release format.
4. Regarding context the theme of the film is complex, mature dealing with intangible matters related to inequalities, liberties, revenge, bereavement etc. This requires

higher levels of conceptualisation and abstraction for which a child younger than 7 years does not cognitively possess. This is likely to confuse and upset a young child of the above age causing emotional harm.

5. The child of this age group does not have the capacity to comprehend the mitigating elements of educational, artistic or entertainment merit of the film.
6. According to the guidelines the content for this age group should not contain any theme that may be disturbing, harmful and upsetting to the child.
7. The expert witness paid cursory attention to this element focussing to the magical thinking of the child which has no relevance to the higher cognitive level of abstract thinking required by the young child to process complex and mature themes.

Having considered all the above, the tribunal hereby orders that:

The Film “**How to train your dragon: The hidden World**” retain the rating and consumer advise of **7 – 9 PG V**

The following Members concurring:

Mr Chris Mamathuntsha

Ms Nonkoliso Sigcau

Ms Manko Buffel

Ms Nonduduzo Kheswa

Prof . Magwaza