

IN THE APPEAL HEARING HELD IN CENTURION, ECOPARK BEFORE THE
APPEAL TRIBUNAL OF THE FLIMS AND PUBLICATIONS BOARD

In the matter between:

UNITED INTERNATIONAL PICTURES

APPELLANT

-and-

THE FILMS AND PUBLICATIONS BOARD

RESPONDENT

FINAL AWARD OF THE FILM "WHAT MEN WANT"

Chairperson: CT Mamathuntsha

The matter before The Appeal Tribunal relates to the appeal lodged by the distributor, United International Pictures who is an Appellant in this matter regarding the classification of the film "What Men Want".

1.

The classification report indicates that this film is a romantic comedy in which the Classification Committee classified it as 18 DLPS.

2.

The Chief Classifiers report amongst other things found that:

- 2.1 Certain themes are confusing and are potentially harmful morally more especially to the viewers under the age of eighteen (18) years;
- 2.2 There is substance abuse which is frequently mild to moderate;
- 2.3 There is a strong language which is frequent and sometimes very strong and demeaning;
- 2.4 There is also Gender-Based prejudice;
- 2.5 There is moderate sexual conduct and or sometimes occasionally strong impact scenes of affection which is sometimes simulated and or implied and
- 2.6 The cinema format is accentuated or compounded the impact of language and sexually related activity which is regarded as strong to very strong

3.

United International Pictures, the Appellant submitted the following:

- 3.1 As the basis of its appeal to the classification decision, the appellant asked The Appeal Tribunal that the film should be to reclassified to 16 DLS;
- 3.2 It further argued that to restrict the age of viewership is tantamount to censorship and that this curtails the freedom to impart information and to receive it;
- 3.3 Referring to Section 16 of the Constitution, it can be argued that to impose a restrictive classification will help protect children against harmful and disturbing material is a limitation on freedom of expression, but is reasonable and justifiable in an open and democratic society;

- 3.4 The appellant further argued that there must be balancing of competing interests and rights; and
- 3.5 Indicated that the Respondent did not contribute much on the principles of consistency.

4.

- 4.1 It should be noted that freedom of expression is not an absolute right; it is subject to Section 36 of the Constitution which limits the right.
- 4.2 In addition to the above the very same Section 16 of the Constitution of the Republic that the Appellant referred to, subsection 2 provides that the right does not extend to propaganda for war, incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.
- 4.3 Furthermore, it should be noted that one of the purposes of the Films and Publications Act, Section 2(b) is to protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences.
- 4.4 The Classification Guidelines provide in Section 1 that no right is absolute, it may be limited in terms of the Law of general application when it is reasonable and justifiable in an open and democratic society.
- 4.5 Section 3(1) of the Classification Guidelines states that all classification decisions must consider the context, impact and release format of the material.

5.

The Respondent submitted that the abilities of a 16 years old-developmentally should be looked at. They cited Piaget`s theory in this regard and submitted that a typical 16 years old will have to engage with abstract thinking. They submitted that this age group is able to tolerate the situations. In support of their objection to the classification decision they argued a 16 year old is critical of its own thinking process and has the cognitive ability to apply logic consistently.

This age group, it was argued by the Respondent that it has its entrenched set of world views which is Impacted by amongst other factors experience, language, upbringing, cultures and religious experience.

This age group as it was argued by the Respondent can Self-reflect, its self-reflexive, it thinks of new experiences and it can measure those with new experiences

As to how this relates to the movie, the Respondent argued that a world view already is deep seated and entrenched in this age group.

In relation to the classifiable elements it would not be the first time that they would have encountered such themes. i.e. story language as well as sexually related themes.

The Respondent submitted that according to Strasburger, the psychological development and state of the child plays a role, as well as access to materials prematurely. A typical child in SA today, by the age of 16 years, would have interacted with the material before. They would have built up level of tolerance. They would have encountered the material in this age. It was submitted further that a 16 year old child can consent to sex, and also to abortion.

The Respondent submitted that the Impression of children beyond that age is simulated. That there is awareness of their constitutional rights to engage in sexual activity They submitted further that we are all aware of the prevalence of sexual violence in South Africa and that the current classification does not consider the context

ON LANGUAGE AND DRUGS

The Respondent argued if this will be tolerable to 16 years old who are Infused with interactions on social media.

The appellant called an expert witness, Dr De Wee, whose evidence will not be repeated in this award. It is however the consensus of the Tribunal that her testimony did little in assisting the Tribunal. She argued that children at this age of 16 already have set of norms and established intellectual ability.

The Tribunal was directed to the movie, the wedding ring of 2015, which confirms that 16 year olds can easily tolerate.

PREJUDICE

It was submitted that the protagonist does not do anything against prejudice and that the movie is centered around prejudice. With regard to overall themes and findings the witness submitted that no moral harm will be caused to the contemporary 16 year old we speaking about and that all this is presented in a comedic framework

The Respondent contended in cross examination that sexual comprehension is not violent and not of an anti-social nature. The Respondent further directed or referred the Tribunal to the classification guidelines which could be found in Page 29 of the classification guidelines Language

According to the Respondent Page 29 of the guidelines contains a reference of how classification should be interpreted , and that is to be found in Sub- paragraph (e) , being that the material should be justified by context. The Respondent submitted that this was indeed a romantic comedy and that the language is justified.

RE-EXAMINATION

In Re- examination, the Appellant contended that there was no nudity in the film and that the sexual activity was simulated and exaggerated

ANALYSIS BY THE TRIBUNAL

The tribunal having listened to the arguments of both the Appellants and Respondent and as well as deliberating on the submissions made found the following:

That the film in question was indeed a romantic narrative, which contains mature and complex themes depicting romance, relationships, gender-based stereotyping as well as deception, dishonesty and unethical behavior.

The educational and comical merits of the film mitigate against the negative tenets. Cognitively the themes require a higher level of abstract thinking and logical reasoning which falls within the developmental level of 16year old viewers and above.

Regarding the classifiable elements, substance abuse has mild to moderate impact justified by the social context. Frequent and very strong, insulting language has a very strong impact, which may cause harm/ antisocial behavior to adolescents functioning at Kohlberg (1987) conventional level and whose moral judgement and moral character is

not fully developed. It may not be well tolerated by some viewers already with moral defects.

Sexual behaviour also displays inappropriate, sadomasochist sexual interaction which has a moderate impact and may vicariously lead to sexual internalization of inappropriate sexual behaviour in adolescents still in the stage of Ericksons (1963) identity formation.

Prejudice and violence have a mild impact on adolescent viewers aged 16 years and above.

Although the above viewers should be fairly mature morally, cognitively and socially the caveat is that they need to be protected from the strong, inappropriate language and sexuality of this film. Hence the necessity of consumer advice.

Whilst we should guard against generalization of the whole population, through cultural experiences, i.e. diversity and desensitization, legitimizing inappropriate sexual behavior amongst 16 year olds should be discouraged.

The question to be asked becomes are children in this age group morally and cognitively developed to differentiate between right and wrong? In answering this question regard must be had to the classification guidelines which are there to ensure consistency.

Appellant contended in its closing argument that having applied the classification guidelines this film can only be classified under 18, because the word cocaine was used out of context.

The Respondent`s closing arguments were that the language used by the one character on the phone who started swearing was out of context and that these words are out of context. The scene referred to according to the Respondent contained no provocation . They argued that the scene was not necessary and that if it was to be taken out it would not have changed the film (message).

In conclusion the Respondent submitted that the South African norms and values require of us to classify differently from other jurisdictions and that we are not bound by other countries This became the totality of a submissions made by both parties to the Tribunal.

Finding /AWARD

The Tribunal through by way of majority finds that the appropriate age classification of the film What Men Want is 16 LS- (No drugs) and consequently the Appellant`s appeal succeeds. No other order is made in this regard

DATED THE 16TH APRIL 2019 IN JOHANNESBURG

Members Present:
Advocate N Sigcau
Ms Manko Buffel
Prof A Magwaza
CT Mamathuntsha
Mr S S Ka Mtuze