

Before the Film and Publication Appeal Tribunal.

In the matter between:

Nu-Metro

and

The Film and Publication Board.

10/2012

Award

In re:

Appeal against the classification of the trailers of the film **Twilight Breaking Dawn Part 2.**

Professor K Govender

(Chairperson)

Introduction and background.

- 1) A classification committee comprising Ms T Sediane, Mr D Ewart and Mr K Kgole classified the trailer on the 11th of October 2012 and assigned the trailer a restrictive age classification of '13'. The practical effect of the classification was that the trailer could not be packaged and exhibited together with a film that had attracted a lesser classification than '13'. The classification committee were primarily concerned about the adverse impact of the trailer on viewers younger than 13. They considered the

themes to be mature and complex and noted that the trailer appeared to deal with a conflict between 'mythological creatures'. The committee correctly describe the trailer as depicting an impending clash between the vampire characters who have a young daughter on the one hand and an alliance of vampires and werewolves on the other. The classification committee in its original report also referred to the 'moderate implications of psychological violence in the trailer.'

- 2) In order to reduce costs, it was decided that a decision would be made after viewing the trailer on DvD's sent to the various members of the appeal tribunal. The appellant supplied CD's containing the trailer to the Board which in turn sent the CD's together with the written representations made on behalf of the appellant to the participating members of the Appeal Tribunal. A telephone conference was scheduled and held on the 3rd of November 2012. Regrettably none of the Appeal Tribunal members were able to properly view the trailer as they are required to do in terms of the Film and Publication Act 65 of 1996. It was then decided to view the trailer on the 10th of November 2012 and hear the arguments of the various parties.

Assessment of the submission of the parties.

- 3) On the 10th of November 2012, the Appeal Tribunal convened at the premises of Nu Metro in Rosebank and viewed the trailer. The appellant was represented by Mr M Rosen of the firm of attorneys Rosin Wright and Rosengarten. The Board was represented by Mr K Kgole who was one of the classifiers in this matter. Both parties submitted written representations and made oral submissions and the Appeal Tribunal is indebted to both of them for their comprehensive and thoughtful submissions.
- 4) In essence, Mr Rosin argued that a 10M classification would be appropriate as there was nothing in the trailer that would be disturbing to children, even those under ten. This trailer, he submitted was in respect of the 5th film in the series and all the other films and trailers had received classifications less restrictive than '13'. He submitted that the classification committee had confused action with violence and submitted

that the violence actually depicted can be described as low to mild. He emphasized that there was no scenes of blood-letting and that the overall theme and message was a positive one of good triumphing over evil and of parents protecting their child. He also pointed out that the film received a less restrictive classification and suggested that it was anomalous for the trailer to be more restrictively interpreted. His conclusion was that there was nothing in the reasoning of the classification committee to indicate why a 10M or PG classification would not be appropriate in this case.

- 5) In a detailed justification of the decision, Mr Kgole pointed out that the trailer was viewed together with other trailers which were patently earmarked to be viewed by children. Seen in that context, this trailer appeared to be of particular concern. He highlighted certain scenes such as that of the men being flung against the wall that demonstrated actual violence, but conceded that in most of the scenes, there was the suggestion of impending violence such as when the hooded figures march forward with menacing and malicious intent. Similarly the scenes depicting flashes of the growling wolves strongly suggest impending violence. They were also concerned about the dramatic film score and sound effects which taken cumulatively created a dark and menacing tone to the film.
- 6) Mr Kgole argued that as the trailer would be seen in cinemas, there would be minimal opportunity for adults to meaningfully engage with and assuage the concerns of the children. The classification committee was of the view that there was a moderate level of violence and that the more appropriate classification would be '13' in the circumstances of the case.

Conclusion and Finding.

- 7) There is no doubt that the Twilight series is most enjoyable and the franchise has produced block –buster films which have been enjoyed by children and adults in various parts of the world. The cinematography is excellent with a strong cast, memorable special effects and enjoyable storylines. From the trailer, it appears that

the film is about protagonists who are condemned to death for bearing a mortal child, which is deemed to be a serious sin. The trailer prepares the audience for the attack by the antagonists and for resistance and defiance by the protagonists. It appears to us that it was the implied menace and the carefully constructed expectancy of impending violence that is of primary concern. The actual scenes of violence were exceptionally brief with no consequence or aftermath being displayed. The expectancy or anticipation of violence cannot be described as violence. The creators of the trailer have created the expectancy and allowed us to fill in the rest of the detail by reference to either our recollection of the other films in the series or from our knowledge of the books upon which this trailer and film are based. It is also important to assess the trailer within the context of the Twilight franchise with its fantastical settings, mythological creatures and gripping special effects. We are of the view that it would be incorrect to describe the trailer as containing scenes of moderate violence.

- 8) By the same token, there is a pervading and brooding sense of menace throughout the trailer and we were of the view that a child of 6 may be disturbed by some of the scenes. Trailers seek to entice and draw viewers to watch the film and are therefore packed with content that arrests our attention immediately. It is not irrational for a trailer containing back to back scenes of violence or action to be given a slightly more restrictive classification than the actual film which has the scenes distributed intermittently within the storyline of the film. Mr Rosen argued that this trailer be assigned a 10M classification and that children of 6 would be reassured by the reassuring presence of an adult. We are not convinced that given the menace which pervades the trailer and the sense of anticipation of impending violence so skillfully and repeatedly created would be counteracted by the presence of an adult in the case of our hypothetical six year old. The trailer will be shown in a cinema and there may be insufficient opportunity to deal with some of the concerns that may arise immediately. In arriving at this conclusion we were particularly mindful of the guiding principle that the classification decision must consider the context, impact

and the release format of the material.¹ In the circumstances we are of the view that the more appropriate classification would be a restrictive age classification of 10.

- 9) Further, we have been informed that the new classification guidelines were promulgated on the 8th of October 2012² and will now be applicable to the classification of all films. All the parties in the matter, quite understandably, applied the 2009 guidelines and in our deliberations we have had regard to both guidelines and are comfortable that the conclusion that we reached is justifiable under both sets of guidelines. For the purpose of completeness, it must be noted that the 10(M) is no longer a competent classification for films under the 2012 guidelines.

Order:

- 1. The decision of the classification committee assigning the trailer of the film, Twilight Breaking Dawn Part 2 a restrictive classification of '13' is set aside.**
- 2. The trailer of the film, Twilight Breaking Dawn Part 2 is assigned a restrictive age classification of '10'.**

Dated at Durban on the 14th day of November 2012

Concurred by:

Adv. D Bensusan.

Ms H Devraj

Prof. A Magwazi

Ms Penny Marek

Ms D Terblanche

¹ . See section 3 of the guidelines of 8 October 2012

² . Government Gazette No. 35765 of the 8 October 2012 No. 804.