



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0041-21
2. Advertiser :	Expedia Group
3. Product :	Tourist Attractions
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	10-Mar-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts a swimming pool outside a house that is not fenced. Following scenes show a family (adults and children) indoors, before they go outside past the pool to the beach.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The house is shown with a swimming pool without any pool fences, a open door leads from the house to pool area and young children in swim wear coming from inside house ready to swim running pass the pool.

The Company promotes isolation from crowds and young children in swim wear on the beach without safety flags or safety flags, against Australian swim safety ideals

This ad is clearly in breach of your Health and Safety guidelines. Pools in most jurisdictions are required to be fenced from the house under very strict standards. In NSW they are also required to be registered. And the ad was broadcast in NSW. Many young children drown or suffer serious (brain) injury in backyard pools each year. To offer accommodation like this to families with young children is utterly



irresponsible, then try to abrogate responsibility with a disclaimer. Can you imagine any hotels in Australia having pools which are not fenced from the rooms?

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We refer to the letter from Ad Standards of 18 February 2021 in relation to an advertisement for the Stayz holiday rental website.

We submit the following information pertaining to the thirty-second "Same House" television commercial (and the abbreviated 15 second version of that television commercial) (together the "Advertisement"):

1. About Stayz

Stayz is a holiday rental business that originated in Australia in 2001 and is now part of the Expedia, Inc. group of companies.

The Stayz website provides access to more than 50,000 properties across Australia, and over two million properties internationally, available for holiday rental.

Stayz's mission is to connect travellers with the people and places they love.

2. Background to the television commercial

The thirty-second "Same House" television commercial (and the abbreviated fifteen second version of that television commercial) (together the Advertisement) was developed to promote:

private holidays; and spending time with family, at a time when it is more important than ever for families to be able to get away from the stresses of their everyday life while also being able to support holiday home hosts who may have been impacted by the pandemic, bushfires or other natural disasters in recent years.

3. Description of the Advertisement

The Advertisement depicts a family of four, a mother, father and their two children inside a holiday home, preparing for a day at the beach.

The Advertisement starts with an external shot of the holiday home and swiftly moves inside where the viewer sees the children playing with various items (a ball, sunglasses, a pool noodle and a body-board) while interacting with their parents who are preparing for the day at the beach.

As the Advertisement continues, we see the family leave the house, walking by the pool area and heading in the direction of the nearby beach.

Once at the beach, the family interact and play together on the sand. The family does not enter the water.



The Advertisement concludes with another external shot of the holiday home including the swimming pool (but with no family members present).

The intent of the Advertisement is to promote accommodation for private family holidays.

4. The Complaint

The complaint received by Ad Standards alleges that the Advertisement depicts unsafe behaviour contrary to prevailing community standards on health and safety (Section 2.6 of the AANA Code) (Code).

The complaint specifically references the following issues:

That the house is shown with a swimming pool without any pool fence and an open door leading from the house to the pool area.

The beach scene in the Advertisement does not promote swim safety including showing young children in swim wear on the beach without surf lifesaving patrol flags.

5. Our Submissions

5.1 *We take our obligations in relation to responsible advertising seriously and have a passion for enabling families to holiday together in a safe and enjoyable environment. In this regard, we take water safety seriously and we thank Ad Standards for bringing this complaint to our attention and providing us with the opportunity to respond.*

5.2 *For the reasons set out below, we consider that the complaint should be dismissed:*

Section 2.1 of the Code: Discrimination or Vilification

There is no discrimination or vilification depicted in the Advertisement.

Section 2.2 of the Code: Exploitative and Degrading

There is no exploitative or degrading content depicted in the Advertisement.

Section 2.3 of the Code: Violence

There is no violence or menace depicted in the Advertisement.

Section 2.4 of the Code: Sex, sexuality and nudity

There is no sex, sexuality or nudity in the Advertisement.

Section 2.5 of the Code: Language

There is no strong or obscene language used in the Advertisement.

Section 2.6 of the Code: Health and Safety



As set out in further detail below, we consider that the Advertisement does not encourage or condone unhealthy or unsafe behaviour having regard to prevailing community standards.

*Section 2.7 of the Code: Distinguishable as advertising
The Advertisement is clearly distinguishable as advertising.*

As a preliminary matter, the property depicted in the Advertisement is available to be booked on the Stayz website but is not located in Australia. The property was chosen for the Advertisement as it is broadly representative of the types of properties available to be booked on the Stayz website (whether in Australia or overseas).

Pool safety component of the complaint

5.3 We note that:

*pool fences are not mandatory for all pools in Australia; and
nothing in the Advertisement suggests that there were no other safety devices or barriers present at the property that would prevent access to the pool.
at no time in the Advertisement are children without supervision when in the vicinity of the pool.*

5.4 As noted above, pool fences are not mandatory for all pools in all jurisdictions in Australia. In this regard, pool safety is regulated on a state or territory basis, and each state and territory imposes different requirements. By way of example:

*in New South Wales, the requirements for child-resistant barriers vary depending on when the pool was built and where the pool is located. For pools built before 1 August 1990, windows and doors may form part of the barrier, but they must be compliant. Some exemptions to the requirement for a fence also apply to pools built after 1 August 1990 but before 1 July 2010 if the pool is part of a small property (less than 230 m²), a large property (2 hectares or over) or a waterfront property;
in Victoria, for pools installed before 8 April 1991, an acceptable barrier restricting unsupervised access to a pool by young children includes a wall of a building that has a door or a window provided that, among other things, such door or window is fitted with a lock or latch that satisfies the relevant requirements; and
in the Australian Capital Territory, there is no requirement to update a pool's barrier for certain older pools (including by installing a compliant fence) unless the pool is altered or relocated.*

5.5 In relation to the complaint regarding the absence of a pool fence, we submit that:

*the "open door" noted in the complaint is only open while the family members are exiting the door to depart the property – the door is not depicted as being open in any other scene in which the pool is shown;
the Advertisement shows the children inside the house in the possession of floatation devices, including a pool noodle and a body-board;*

the children are accompanied by, and under the supervision of, their parents at all times during the Advertisement, including when passing the pool;
the Advertisement does not indicate that any member of the family enters or otherwise uses the pool, or engages in any unsafe activity or behaviour around the pool;
both children in the Advertisement are older than 5 years of age and there is nothing in the Advertisement to suggest that the children are not competent swimmers or familiar with safe swimming practices;
the Advertisement shows wide frames of the pool area which are shot from a distance and there is not sufficient detail, nor anything in the Advertisement, to suggest that appropriate safety devices have not been installed at the access points to the pool, such as compliant locks and latches;
the Advertisement does not in any way condone or endorse children entering a pool on their own without adult supervision; and
the depiction of children over the age of five walking past a pool whilst being supervised by, and in close proximity to, their parents is not a depiction which would be contrary to prevailing community standards around pool safety.

5.6 Please also note that:

- a) *the Advertisement is not targeted at children – rather, the Advertisement is targeted at adults who are planning and booking a family holiday;*
- b) *in accordance with clause 1.4 of the Terms and Conditions that govern use of the Stayz website, visitors to the website are not authorised to register with, or to otherwise use, the website unless they have the capacity to enter into legally binding contracts person; and*
- c) *the Stayz website requires property owners or managers who wish to display their properties to upload photographs of their properties and a description and details of the features of the properties (such as whether the property has a pool) to ensure that users are able to assess a property according to their own needs prior to booking.*

5.7 We further note that:

- a) *the relevant scene in the Advertisement where the family is passing the pool is relatively brief (approximately 5 seconds of the 30 second Advertisement); and*
- b) *while the family does briefly appear in the proximity of the pool, the family's trip to the beach is immediately shown (confirming that no harm occurred while passing the pool).*

Beach safety component of the complaint

5.8 In relation to the claim that the Advertisement, "promotes isolation from crowds and young children in swim wear on the beach without safety flags", we submit that the interpretation of the Advertisement by most members of the community would differ from this interpretation reflected in the complaint.

5.9 We submit that:

- a) the Advertisement plainly shows that the children are accompanied by, and under the supervision of, their parents at all times while on the beach;
- b) no member of the family, including the children, is depicted swimming or even entering the water and there is nothing to indicate that any family member has engaged in such activities;
- c) as the Advertisement shows close frames of the family entering the beach and, once on the sand, playing and interacting on the sand, it is not possible to determine whether the beach is patrolled by surf lifesaving personnel;
- d) it is evident that the family is continuing along the beach, and nothing in the Advertisement indicates that any member of the family has, or will, swim or enter the water in an area of the beach that is not being patrolled by surf lifesaving personnel;
- e) the Advertisement depicts a scene consistent with summer beach time activities and enables viewers to identify with the experiences they may enjoy whilst on holiday; and
- f) in any event, it is not unlawful or unreasonable for a family to visit a beach that is not being patrolled by surf lifesaving personnel.

5.10 *The depiction of a family playing on the sand at a beach that does not have surf lifesaving flags that are clearly visible to the viewer does not amount an action that is contrary to prevailing community standards on health and safety.*

In our view, the Advertisement does not depict material that is contrary to prevailing community standards on health and safety. The Advertisement does not encourage or condone irresponsible behaviour in a pool area or at the beach. Rather, all activities shown in the Advertisement are carried out with safety and care and under adult supervision.

For all of the reasons set out above, we submit that the Advertisement is not in breach of the Code.

We thank Ad Standards for the opportunity to provide these submissions in relation to the complaint and respectfully request Ad Standards dismiss the complaint.

THE DETERMINATION

The Ad Standards Community Panel (Panel) considered whether the advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement depicts an unfenced swimming pool which is unsafe, and promotes isolation from crowds and young children on the beach without safety flags.

The Panel reviewed the advertisement and noted the advertiser's response.

Section 2.6: Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.



Unfenced pool

The Panel noted the information provided by the advertiser about regulations on pool fencing in some states in Australia. The Panel acknowledged that states have different requirements and that in some instances windows and doors may form part of the barrier.

The Panel considered that the depiction of the pool in an advertisement for idyllic holiday stays or vacation rentals is unlikely to be considered by most members of the community to be promoting or encouraging people to not fence their own pool, or endorsing people who illegally do not have their pool fenced.

Children on beach without safety flags

The Panel noted that the children are supervised by their parents at the beach.

The Panel considered that most members of the community would not find the depiction of a family using a beach without safety flags (as opposed, for example, to swimming outside the flags on a patrolled beach) to be contrary to Prevailing Community Standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaints.