



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0044-22
2. Advertiser :	Rusty
3. Product :	Clothing
4. Type of Advertisement/Media :	Internet
5. Date of Determination	9-Mar-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.2 Exploitative or Degrading
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

This product listing features a young girl wearing the advertised t-shirt and bikini bottoms.

THE COMPLAINT

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

It's an ad for a crop top and she's wearing underwear. It is just plain wrong to be having a little girl dressed like that advertising crop tops.

THE ADVERTISER'S RESPONSE

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

Yes the ad is for a crop top, however the model is wearing swim bottoms, they are swimwear, not underwear.



After reviewing the style online (which is what would have been in a retargeted ad) I understand how there could be confusion, out of context & without the swimwear set also advertised they could be perceived as underwear (swimwear style link for reference: <https://rusty.com.au/collections/kids-girls-swimwear/products/cleo-bikini-set-girls-leopard-n21>).

This was not our intention, and we have rectified the matter by cropping the images on our website to avoid further confusion.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement is promoting a crop top and showing a child in underwear, which is inappropriate.

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

Section 2.2: Advertising or marketing communications should not employ sexual appeal where images of Minors, or people who appear to be Minors, are used.

Does the advertisement use sexual appeal?

The Panel noted the pose of the child and her clothing.

The minority of the Panel considered that showing a child wearing a t-shirt with underwear is a depiction of sexual appeal. The minority noted that there is no mention of the bottoms being swimwear in the advertisement and considered that most viewers would interpret the bottoms as underwear. The minority considered that the girl's pose, her hand on her hips and one hip cocked out, further sexualises the image.

The majority of the Panel considered however that the pose of the girl is consistent with many children when having their picture taken and is not inherently sexual. The majority considered that, per the advertiser's response, the girl is depicted in swimwear rather than underwear. The majority considered that showing children in t-shirts or rashies in combination with swim bottoms is not unusual and is not sexualising the child.

Overall the Panel determined that the advertisement did not contain sexual appeal.

Section 2.2 conclusion

The Panel found that the advertisement did not contain sexual appeal and the provision of Section 2.2 did not apply to this image.



Section 2.4: Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

“Images of models in bikinis or underwear are permitted, however, unacceptable images could include those where a model is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects). Models who appear to be minors should not be used in sexual poses”.

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel noted that the girl in the advertisement was not engaged in sexual intercourse. The Panel considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered similar matters under Section 2.4 as under 2.2 in regards to whether the advertisement depicts sexuality. Overall, the majority of the Panel considered that for the reasons discussed under Section 2.2, the image did not depict sexuality.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that the girl is shown to be wearing a t-shirt and brief-style bottoms. The Panel considered that the definition of nudity includes partial nudity and considered that some viewers may find the girl to be partially clothed.

Noting the definition above, the Panel considered that the advertisement did contain partial nudity.

Is the issue of nudity treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.



The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted that this advertisement is a product listing on a website and considered that the relevant audience would be adults shopping for children.

The Panel noted that under the definition in the Code the advertisement did depict partial nudity as the girl was not fully covered by clothing.

The minority of the Panel considered that the product being advertised is a t-shirt and could have been advertised without the use of a semi-naked child. While unrelated to the current case, the minority noted that the product listing for the adult version of the t-shirt features a woman in jeans.

The minority of the Panel considered that this image contains inappropriate sexualisation of a minor.

The majority of the Panel considered that most members of the community would not consider a person in swim bottoms and an opaque t-shirt to be naked to a degree that would breach community standards. Similar to the matters discussed in Section 2.2, the majority of the Panel considered that overall the image amounted to a depiction of a child in swimwear and is not sexualised.

Section 2.4 Conclusion

The Panel found that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code, the Panel dismissed the complaint.