



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0202/19
2	Advertiser	LJ Hooker Mona Vale
3	Product	Real Estate
4	Type of Advertisement / media	Print
5	Date of Determination	10/07/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - sexualisation of children

DESCRIPTION OF THE ADVERTISEMENT

This print advertisement depicts a naked child on the beach shown from behind, and the text "It's official...It's the bottom".

THE COMPLAINT

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

Using a naked toddler, even if only depicted from behind, in any advertising is inappropriate and unethical.

This image is irrelevant to their real estate services and their sales performance, which could be misleading based on other results in the region where the Manly Daily is distributed "based on our last 2 months (sic) sales ... the bottom of the market has been and gone!"

There is no reference to 3rd party data to prove their statement is factually correct, nor have they made any attempt to qualify which regions these record sales sales were made to justify their statement "It's official. It's the bottom".



They have taken no care and have blatantly used a naked image of a child to promote their sales activities. Shameful.

THE ADVERTISER'S RESPONSE

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

The advertiser declined to provide a response.

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 features a naked image of a child.

The Panel viewed the advertisement and noted the advertiser's declined to provide a response.

The Panel noted that Section 2.2 of the Code states:

"2.2 Advertising or Marketing Communication shall not employ sexual appeal:
(a) where images of Minors, or people who appear to be Minors, are used; or
(b) in a manner which is exploitative or degrading of any individual or group of people."

The Panel noted that the print advertisement featured an image of a young toddler from behind. The toddler is on a beach and is not wearing any clothing. The text with the advertisement reads "It's official. It's the bottom."

The Panel first considered whether the advertisement contained sexual appeal.

The Panel considered that the child is depicted as being naked and is shown from behind so that his back and buttocks are visible. The Panel considered that it is common for very young children to be naked on the beach and nudity in this context does not equate to sexualisation. The Panel considered that the young child in the advertisement was not sexualised in any way and was not depicted as a sexual being.

In the Panel's view the advertisement did not contain sexual appeal and did not



breach Section 2.2 (a) of the Code.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered whether the advertisement contained sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is ‘sexual intercourse; sexually stimulating or suggestive behaviour.’ (Macquarie Dictionary 2006).

The Panel considered that there was nothing in the advertisement which would be considered to be a depiction of sex.

The Panel considered whether the advertisement depicted sexuality.

The Panel noted the definition of sexuality includes ‘sexual character, the physical fact of being either male or female; the state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one’s capacity to experience and express sexual desire; the recognition or emphasising of sexual matters.’ The Panel noted that for the application of the term in the Code, the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

Similar to the comments above, the Panel considered that the image did not contain content that could be interpreted as sexualised.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes ‘something nude or naked’, and that nude and naked are defined to be ‘unclothed and includes something ‘without clothing or covering’.

The Panel considered that the child in the advertisement was not wearing clothing and that the advertisement did contain nudity.

The Panel then considered whether the advertisement treated the issue of nudity with sensitivity to the relevant audience.

The Panel considered the meaning of ‘sensitive’ and noted that the definition of sensitive in this context can be explained as indicating that ‘if you are sensitive to other people’s needs, problems, or feelings, you show understanding and awareness of them.’ (<https://www.collinsdictionary.com/dictionary/english/sensitive>)



The Panel considered that this advertisement appeared in a real estate magazine, and the relevant audience for this advertisement would therefore be adults interested in real estate.

The Panel considered that the child in the advertisement was taken on a beach in the area that the real estate agency was promoting. The Panel considered that the image was supplied by a local blogger and that the location is relevant to the messaging of the advertisement.

The Panel considered that very young children are often naked at the beach and that the child's nudity was not out of place in the context of the image.

The Panel acknowledged that some members of the community would prefer for children not to be featured in advertisements while not wearing clothes, however in this advertisement the Panel considered that the child was not depicted in a sexualised manner and that the nudity was appropriate for the context.

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

Finding that the advertisement did not breach the Code on any other grounds the Panel dismissed the complaint.

