Court ruling has broad effect on R.E. industry advertising

By Diedre Johnson
Daily Commerce Staff

It happens often and it's subtle. An ad for a new housing development appears in a newspaper or magazine; the project's details, such as price range or location, are listed; and, finally, there is a picture or illustration of people enjoying the surroundings. For almost 20 years, these ads have usually portrayed only one race or nationality. Some call it targeting; others, discrimination.

A federal court in Virginia ruled recently that an apartment-building firm "violated the Federal Fair Housing laws by almost exclusively using Caucasian models in their real estate ads." Approximately $12,000 was awarded to a local fair-housing advocacy group and to a minority who had given testimony stating that the firm's brochure discouraged potential minority tenants.

Susan Lennon, an account supervisor for the advertising firm of Don Frank & Associates who said she read about the case in a real estate industry publication, indicated that while discriminatory suits may not occur very often because the real estate business is entering a period in which not as many human models will be used in ads, "I can see where (discrimination) might happen with real estate brokers and agencies looking for a certain kind of buyer."

Referring to the tendency of an agency to run an ad in the neighborhood where its offices are located, she said, "If you advertise in a certain area, you are most likely to get more blacks, or more whites, or more Mexicans." She explained that most brokerages tend to promote areas that contain members of the same race.

"I can understand the ruling, and there is some need for it. . . . There are certain areas that you don't want to show (to) certain ethnic groups, where they (real estate agents) worry that they might get only that group."

Lennon maintained that her agency handles many real estate accounts that do not use models. "It's a matter of economics. It's expensive . . . the models, the photography," she said.

Comparing the recent cautions and the federal ruling to affirmative action, she predicted that a law might be enacted that would mandate racial quotas in ads. "It might happen, who can say?"

She said she thought that using ads depicting all races was fair but questioned doing that in every ad. "Where do you draw the line," she said. And referring to most publications' current use of disclaimers at the bottom of ads showing only white models, she said that "pretty soon there are going to be nothing but disclaimers."

Colleen Bates, co-director of The Charles Dunn Co.'s public relations department, said her company does not handle residential real estate but is aware of the recent ruling. Bates commended the ruling and said she thought that many real estate ads are Anglo-directed. "It's probably a good idea. Usually they (ads) show people (who) are white."



Design by CATHY BRIGHTFUL/Daily Commerce

In an article in The Business Review, a Washington, D.C., weekly, a real estate company vice president said that complying with the federal court ruling will be hard on the budgets of some real estate firms and building contractors because of the widespread usage of "stock photos." According to the executive, few pictures in most agencies' files depict minorities. Renting stock pictures costs approximately $75, and, according to the article, to hire models, set up and conduct a shooting costs approximately $750.

Realtors and ad agencies should be aware that their ads create an image, according to Realtor Ken Kelly. "If there was any advice I could give to advertisers, it would be to make a conscious effort to see to it that pictorial advertising includes and represents the various people that make up the Southern California community," he said.

Kelly, who was formerly employed with San Fernando Valley-based M.J. Heritage and is a member of the San Fernando Valley Board of Realtors, is also on the board of directors of the San Fernando Valley Fair Housing Council. He said the council studies over a six-month period ads that have been reported to be discriminatory.

He said the council follows the criterion for fair housing in the 1968 Civil Rights Act, which states, "It is illegal to make, print or publish an ad that indicates a preference for any race, creed or color in marketing real estate."

In December 1986, the Los Angeles Times drew up a settlement agreement that included a list of regulations and guidelines for real estate ads. This settlement included a stipulation that the paper would publish a disclaimer reading "Models used in this ad do not reflect any racial preference" underneath each real estate ad using models.

The agreement was the result of a lawsuit filed by the Westside Fair Housing Council and a potential tenant, both of whom claimed ads printed in the Times were discriminatory.

The suit was later dropped, according to Blanche Rosloff, executive director of the council, when the defendant died. However, the stipulations of the agreement remained in effect. Despite that, she said the council was not happy that the suit was dismissed.

"The Department of Fair Employment Housing dropped it," she said.

Another suit, against J.A. Hedrick Co., a building contractor, resulted in a $1,000 settlement, $250 of which was distributed to several housing councils, including those of the Long Beach and San Fernando Valley areas.

Monitoring real estate ads is a constant battle for Rosloff, who said she spends half her time on the subject. "What I find sitting in this chair is that laws mean nothing. You've got to enforce them. I was shaken by the difference between what our laws contained and what continued to be practiced."

Rosloff said she is not trying to hinder the real estate business, but to make advertisers aware of what they are advertising. "They don't do it with classifieds, they don't say Christian only, don't say Jewish only, or employment (ads). They only do this on display ads," she said.

"I don't want to do this," she said, referring to the Fair Housing Council's recent disputes with the Los Angeles Times, "but I feel I'm . . . and other people are being hurt by this."

On Thursday, a meeting was held with representatives from the Los Angeles Times advertising department, various advertising agencies, and members of the California Building Industry Association, the Department of Housing and Urban Development, and several Fair Housing councils. According to Jim Hornstein, an attorney on the board of the Westside Fair Housing Council, those at the meeting agreed to form a task force to set up voluntary guidelines complying with fair-housing laws and to disseminate them in symposiums throughout the state. He added that the CBIA would be coordinating the first meeting within 30 days.

Rosloff also said she believed that part of the problem is that advertisers are not aware of the seriousness of discriminatory ads. "We're hoping that the consciousness level can be raised and people can see how much importance a picture has and to use it fairly, so that all minorities have a chance at fair housing."

But, said Los Angeles Times Real Estate Editor Dick Turpin, "You can't tell advertisers what to put in their ads. We can tell them but we can't make them do it.

"One of the situations came up — in a predominately black area, the advertiser put pictures of a black couple in their ad. The builder's response was that they *were* black, this is where they work, the housing is affordable. 'I want to sell my homes to them, the price is right, etc.' "

Turpin said he did not know how such a situation could be resolved. "I don't know if any advertiser is going to . . . put a different couple in every week."

"The issue is not any different now than since those guidelines have been adopted," said William Niese, vice president and general counsel for Times Mirror Corp., which publishes the Los Angeles Times. According to Niese, the disclaimers the paper uses with ads featuring models began running in the real estate section in March 1987. A Fair Housing logo also appears with each of these ads.

He said the paper's advertising department has also been sending out guidelines and cover letters to developers and real estate agencies about the new policy.

"Nobody compelled us to do that, we did that voluntarily . . . to focus on the fact that models do sometimes indicate a preference." He added that it would be impossible to define just what ads are considered discriminatory.

"The content of it belongs with the advertiser. That's not our role, we're no smarter than anyone else. These people are capable of providing ads once they realize what the guidelines are."

Burt Mann, advertising director for the Daily Journal Co., which publishes the Daily Commerce, said, "You have to be very careful" with ads using models. He said the Commerce does not currently have a large number of these ads but added, "We are aware of the situation, (and) if we encounter this sort of thing, we would hope to prevent it."

Terry Francke, legal counsel for the California Newspaper Publishers Association, said he personally felt that the choice of advertising is based less on ethics and more on what is legally feasible. "My own view is that the kind of question I hear is not what is ethical or good public policy but what poses a legal problem."

As did Niese, he added that there is no set newspaper policy for what is contained in a display ad. "I gotta ..., I can't think of no policy issue that is directed to guiding newspapers or their operators."

He also said fair-housing organizations are more sensitive to what he termed "suspect" uses of language, where most people would not be, including the advertiser or the publication.

Although he stressed he did not have a real estate or marketing background, Francke suggested that potential advertisers consult with an ad agency and that they "should look at all the kinds of people wanting to buy your home, look at your ad through their eyes . . . do they have anything in the ad that does not stress the total composition of the community."

According to Melinda Morgan, her firm, Newport Beach-based B.J. Stewart Advertising & Public Relations, is attempting to comply by counseling its clients. Morgan, director of public relations for the firm, said the agency brings in an ethnic minority for all ads with models to make them multiracial.

Approximately 63 percent of the ads her firms has done within the past 12 months, according to Morgan, used minorities.

She also said the agency informs its clients about the recent federal court ruling. "It is our job to counsel our clients. . . ," she said.

Morgan said B.J. Stewart, like Don Frank & Associates, does not always use human models. Instead, the agency uses photographic imagery, or it will put in an ad things that are pleasing to a certain group of potential buyers. "We are trying to portray who is going to buy that product."

Turpin, the real estate editor of the Times, indicated that the problem of discriminatory advertising in real estate might be postponed due to increasing mortgage rates. "When times are good, the advertising drops off. Real estate is a cyclical business (and) we're going through one of those (good) cycles again."