



Ad Standards Community Panel
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Case Report

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| 1. Case Number : | 0260-19 |
| 2. Advertiser : | Ultra Tune Australia |
| 3. Product : | Automotive |
| 4. Type of Advertisement/Media : | Internet - Social - Other |
| 5. Date of Determination | 11-Sep-2019 |
| 6. DETERMINATION : | Upheld – Not Modified or Discontinued |

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

AANA Code of Ethics\2.2 Exploitative or Degrading

AANA Code of Ethics\2.4 Sex/sexuality/nudity

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

There are two versions of this YouTube advertisement:

The 72 second version of the advertisement depicts four women in a pink convertible car. One of the women says, "You girls I can't wait to go for a swim." Another woman states "hey check out those boats" and a third woman responds "wow they're so big" before putting a lollypop into her mouth. The car approaches road works and the driver attempts to brake and realises that the brakes aren't working. She yells, "there's no brakes" and they are seen driving past a roadworker holding a stop sign who is looking at his phone. The pink car with the licence plate 'rubbagirlz' continues onto a pier while the women in the car scream and wave their arms in the air.

Charlie Sheen is depicted on his yacht which is named 'Winning'. He is drinking and fishing and says, "feeling lucky".

The women's car goes off the end of the pier and ends up in the water. Charlie Sheen states, "women overboard, lots of them", and the four women are shown in the water.

The four women climb onto the boat and Charlie Sheen greets them by saying 'welcome aboard' and touching them on the back. He says, "and I'm all out of towels" then looks at the camera and says "winning". One of the woman explains "breaks



failed." Charlie Sheen responds, "That's terrible." The woman who was driving asks 'do you have a phone' and Charlie Sheen assumes it is for a selfie. The woman rolls her eyes and takes the phone and uses it to contact Ultra Tune. The voice over states "avoid unexpected situations, get your car serviced at Ultra Tune".

Charlie Sheen, the four women from the car and three women in bikinis are then shown inside the boat's cabin. Charlie Sheen asks, "ready skipper?" and Warwick Capper wearing a captain's hat replies, "ready Charlie". A man from Ultra Tune is then seen standing by his car on the road and asks, "boat trouble?". Charlie Sheen pops his head out of the cabin to say "nope, car trouble", and indicates the rear of the car which can be seen protruding from the water.

In the 30 second version of the advertisement Charlie Sheen is depicted on his yacht which is named 'Winning'. He is drinking and fishing and says, "feeling lucky". A woman driving a car attempts to brake and realises that the brakes aren't working. The pink car with the licence plate 'rubbagirlz' goes off the end of a pier and ends up in the water. Charlie Sheen states, "women overboard".

The four women climb onto the boat and Charlie Sheen greets them by saying 'welcome aboard' and touching them on the back. He says, "and I'm all out of towels" and looks at the camera and says, "winning".

The woman who was driving asks "do you have a phone?" and Charlie Sheen assumes it is for a selfie. The woman rolls her eyes and takes the phone and uses it to contact Ultra Tune. The voice over states, "avoid unexpected situations, get your car serviced at Ultra Tune". A man from Ultra Tune is then seen standing by his car on the road and asks, "boat trouble?". Charlie Sheen pops his head out of the cabin to say, "nope, car trouble" and indicates the rear of the car which can be seen protruding from the water.

THE COMPLAINT

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

This ad is incredibly sexist, it portrays women as extremely stupid and helpless that need a man to save them and only function as objects of sexual desire. It explicitly implies the sexual overtone of the ad with Charlie Sheen's remarks. It is absolutely ridiculous to have this ad screening in this day and age. It is disgusting and I will never be using this company's services.

The advert is sexist and misogynistic; it portrays women as sexual objects as all the women wear skimpy clothing with lots of makeup, and describe the boats they see as 'so big' while sucking a lollipop. The women are presented as bad drivers, and as they board the boat, Charlie Sheen touches all of their lower backs and says that there are no more towels, which he describes as 'winning' as the women must remain in their wet clothes. The advert utilises sexist stereotypes to convey the message, such as women as bad drivers or as hyper-sexualised objects, which is offensive towards women.



THE ADVERTISER'S RESPONSE

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

The advertisement has been the subject of a previous ruling dated 8 May 2019 by a previous Panel following the advertisement being broadcast on free to air television – case number 0022/19 (“the previous Panel”).

The procedure that led to the previous Panel’s findings was flawed by reason that the Independent Reviewer exceeded her role and authority. The Independent Reviewer not only assessed the validity of the process followed by the Board, but then went on to assess the merit of the case.

As noted in AABA Fact Sheet in respect to the review process, it is inappropriate to set up one person as a decision-maker in place of a 20 member Board that makes determinations on the basis of community standards, yet this is what occurred on the previous occasion.

Following the Independent Reviewer’s recommendation, the Previous Panel reviewed its determination in line with recommendations from the Independent Reviewer, most of the recommendations of the Independent’s Reviewer’s having gone to the merits of the case.

Accordingly, UTA does not accept the validity previous Panel’s findings for reasons of procedural error in the review process.

In respect to the current complaints which relate to the advertisement being shown on social media, UTA responses follows.

AANA Code of Ethics clause 2.1

The complaints against the advertisement appear to have a common theme being that because there are attractive women in the advertisement therefore the advertisement vilifies women. As noted in the Guideline to clause 2.1 of the Code, portraying a person as attractive does not, in and of itself, constitute discrimination or vilification.

2. *The previous Panel found that the advertisement contravened clause 2.1 of the Code as it considered:*

“the cumulative effect of the advertisement amounted to depiction which humiliates the women and depicts them receiving less favourable treatment because of their gender.”

“The 60 second version of the advertisement did depict material in a way which discriminates against or vilifies a section of the community on account of gender.”

3. *The previous Panel’s findings in respect to a contravention of clause 2.1 were based on a fallacious syllogism namely, Charlie Sheen is a sexual predator, Charlie Sheen is in the advertisement together with “doll-like” women, therefore the*



advertisement endorses predatory sexual behaviour against women which constitutes discrimination against or vilification of a section of the community on the basis of gender.

4. *UTA strongly rejects the proposition that the advertisement contravenes clause 2.1 of the Code. The advertisement does not:*

Depict unfair or less favourable treatment of women;

Humiliate or invite contempt or ridicule of women so as to constitute vilification.

Lead to negative stereotyping that all women are bad drivers and do not know how to look after their cars.

5. *The previous Panel failed to identify a prevailing community standard against which the advertisement was judged, and also failed to properly take into consideration that:*

The context of the advertisement which is of a scenario which is manifestly one which is that of a light-hearted, exaggerated, fantasy scenario.

The AANA's guidelines state that: "advertisements can humorously suggest stereotypical aspects of an ethnic group or gender, provided the overall impression of the advertisement does not convey a negative impression of people of that group".

6. *In reaching its decision the previous Panel considered that there was a contrast between the depiction of men and the depiction of women in the advertisement, that the women were depicted as:*

Helpless;

In need of rescuing and assistance by men; and

Had no personal control:

This was in error.

7. *The advertisement in fact depicts the opposite as it depicts the women's ability to overcome by themselves the "unexpected situation" they found themselves consequent upon the car's brakes failing. Specifically:*

The women were not depicted as being helpless as they undertook their own rescue by swimming to the nearest object, Charlie Sheen's boat, and boarding the boat unaided. The women were not in need of rescuing by any men because they effected their own rescue.

The women took control of the situation both by swimming to boarding the boat unaided.

8. *Further, upon boarding the boat, the vehicle driver takes control of the situation by requesting the loan of a phone to call Ultra Tune Roadside Assist. Importantly, in this section of the advertisement, the vehicle driver not only takes control of the situation by requesting a telephone to call out Ultra Tune Roadside Assist but importantly:*

By rolling her eyes and her body movement, the driver mockingly dismisses Charlie Sheen and his belief that when the driver asked for a phone all she wanted was to take a selfie of her with Charlie Sheen



The driver demonstrates that she has no interest in Charlie Sheen and his stupid suggestion of a selfie by grabbing the phone out of Charlie Sheen's hand (see screenshot below).

9. *It is not conceded that the advertisement depicts Charlie Sheen's thoughts of "winning" in a predatory sense, but if that is the case, such thoughts were clearly dashed by the vehicle driver's mocking putdown of Charlie Sheen. The female driver presents as:*

a strong, confident, independent woman who has taken control of the unexpected situation in which she found herself in (coincidentally the actress in question was also at one stage a boxer); and not interested in Charlie Sheen.

This is intentionally the most powerful part of the advertisement. Further, none of the other women from the vehicle showed any interest in Charlie Sheen.

10. *Given that the driver of the vehicle had taken control of the unexpected situation in which she found herself in, the previous Panel's ruling which suggested that it was wrong not to depict the other the three passengers in the car as doing something to take control of the situation was nonsensical. If the driver of the vehicle is taking necessary control of the situation, what other role is there for the passengers to play?*

11. *The previous Panel stated that it considered that the advertisement led to a cumulative impression that the four main women in the advertisement were "doll like" or "playthings" by reason of four factors: the Barbie-like car, the numberplate "rubbbgirlz", the women's doll like appearance and the clothing of the women.*

Addressing each of these alleged factors:

The convertible vehicle in question was a popular make of vehicle within a niche market which usually sold in bright or pastel colours. UTA contends that the previous Panel denigrated all women who own such a vehicle by in effect suggesting that only "Barbie like" women own such vehicles.

The numberplate sought to capitalise on previous advertising campaigns for the sale of tyres which campaigns have been permitted.

The actresses in question, with the possible exception of one actress, did not present with doll like appearances – see below photograph. It was wrong for the previous Panel to denigrate and vilify these women's appearances in this way.

The previous Panel said that the women's clothing was also part of their cumulative impression. There was no elaboration or explanation of why or how it is said that the clothing all four women wore was inappropriate or could lead to the conclusion of the women having a "doll-like" or "playthings" appearances.

The women's clothing is not out of the ordinary with the way women are dressed both in television advertisements and in day-to-day life.

This aspect of the previous Panel's Ruling was in fact contradicted by other parts of the Ruling where the previous Panel acknowledged that that the four women in the advertisement were dressed appropriately in casual clothing, that the clothing was not revealing and that the women were not revealingly dressed.



12. *The previous Panel also considered that the advertisement depicted the female driver as not knowing how to stop a car in an emergency situation, by reason of the fact that she did not attempt to use the handbrake and nor did she appear to be looking for another way to stop car. The previous Panel then stated that it considered this aspect of the advertisement portrayed a negative, gender-based stereotype of women being bad drivers.*

13. *The previous ruling is flawed from a safety perspective and demonstrates the previous Panel's limited understanding of potential problems of employing the handbrake as a means of emergency braking in the confines of the single lane pier shown in the advertisement with pedestrians on the side. Using the parking brake at speed can be dangerous and lead to a loss of control from locking of the wheels. Whilst this will slow the car quickly it can result in a sideways skid making the vehicle uncontrollable and possibly hitting the pedestrians and then skidding off the pier sideways.*

14. *Accordingly, the suggestion by the previous Panel that a handbrake stop should have been included in the advertisement would result in the advertisement being contrary to clause 2.6 of the Code.*

15. *The advertisement contains no suggestion that the cause of the brake failure was the consequence of any actions taken by the female driver. To the contrary the suggestion put forward is that to avoid such an unexpected situation car owners, be they male or female, should have the car serviced by Ultra Tune.*

AANA Code of Ethics clause 2.2

16. *Clause 2.2 was introduced into the revised Code of Ethics applied to advertising and marketing communications from 1 January 2012 and was amended on 1 March 2018.*

17. *In the 2012 version, clause 2.2 reads: "advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people".*

18. *In its Submission dated 15 July 2013 to the Australian Communications and Media Authority Contemporary Community Safeguards Enquiry, AANA said in respect to the 2012 amendment that:*

"The section restricts the use of images which employ sexual appeal which is exploitative and degrading of any individual or group of people."

"This section restricts the use of images if they are exploitative and degrading."

19. *From the above material it is clear that prior to the 2018 amendments, clause 2.2 was concerned with images which employed sexual appeal which was exploitative and degrading of any individual or group of people.*



20. *In the 2018 version, Clause 2.2 “prohibits the use of advertising or marketing communication which employs sexual appeal which is exploitative of or degrading to any individual or group of people.”*

21. *The Practice Note issued by AANA in respect to the 2018 version of the Code states that for advertisements to breach clause 2.2, the advertisement: “.....must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable under this section. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative of or degrading to any individual or group of people. The Community Panel may have regard to the context or medium in which the material appears.” (emphasis added)*

22. *AANA’s previous Panel held that the advertisement contravened subparagraph (a) of the definition of Exploitative, but did not contravene subparagraph (b) of the definition of Exploitative in clause 2.2 of the Code.*

23. *The previous Panel found that the depiction of the women in the car presented as showing the women as having sexual appeal. However, the Code specifically states that: “for material to breach (section 2.2) of the Code, it must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable under this section. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative or of degrading to any individual or group of people. The Community Panel may have regard to the context or the medium in which the material appears.”*

24. *Having found the four women in the car presented as having sexual appeal, the previous panel then held that the advertisements contravened clause 2.2 by taking advantage of the sexual appeal of the women in the advertisements by depicting them as objects or commodities. The previous Panel said that it reached this conclusion by reason of the following four matters, namely:*

That the three other women who featured in the advertisement were dressed in bikinis and were depicted as decoration and had no voice or power.... and that the depiction of these three women as background objects or decoration added to the overall impression of the advertisement which is that all the women on the boat were there for the sexual pleasure of Charlie Sheen.

The four main women in the advertisement are depicted as doll like objects, are shown to be passive not active, and to have no real voice and the previous Panel then referred back to its reasoning in respect to clause 2.1 of the Code to support its ruling in respect to clause 2.2 of the Code.

That the use of Charlie Sheen in the advertisement was likely to be against the prevailing community standards relating to the depiction of women in exploitative manner.

The use of Charlie Sheen offered an implied endorsement of Charlie Sheen’s reputation for predatory behaviour and the objectification of women.

25. *In respect to:*



Subparagraph (i) above, UTA agrees to delete this scene from the advertisements. Subparagraph (ii) above, for the reasons detailed above in respect to clause 2.1 of the Code, UTA emphatically rejects the proposition that the images of the four main women in the advertisement are depicted as doll like objects, are shown to be passive not active, and to have no real voice.

Subparagraphs (iii) & (iv) above, clause 2.2 of the Code covers images and other material which visually presents as employing sexual appeal in a manner which is exploitative or degrading. No aspect of the images of the four main women visually presents these women as employing their sexual appeal in a manner which is exploitative or degrading to them, and UTA refers to and repeats its above analysis in respect to clause 2.1 of the Code.

Subparagraph (iii) above, clause 2.2 of the Code is not contravened by the use of a particular person be it Charlie Sheen or anyone else. The previous Panel was in error in treating the presence of Charlie Sheen with the four actresses as in itself providing a basis for finding a contravention of clause 2.2 of the Code.

Subparagraph (iv) above, as analysed to above the driver's putdown of Charlie Sheen constitutes a rejection of male predatory behaviour and the objectification of women.

26. *In the previous ruling when considering clause 2.2, the previous Panel correctly observed that the depiction of the four women did not contravene subparagraph (b) of the definition of "exploitative" as:*

There was no particular focus on the women's body parts.

The women's clothing was not revealing.

The women were not revealingly dressed.

When the women are in the car the focus is on the women's faces and not any body part.

Whilst the women's full bodies can be seen after they climb onto the boat and some cleavage is visible, there is an equal focus on their entire bodies and no focus on a body part.

27. *The advertisement is not exploitative nor is it degrading of women as it does not depict the women as objects or commodities. Any suggestion to this effect is perversely 180° off the mark as the advertisement makes it clear that:*

The women are in control both of their rescue by swimming to the boat and in making the call to Ultra Tune;

Dismissing Charlie Sheen's clearly misplaced belief that all they would be interested in would be getting a selfie with him;

Charlie Sheen has been put in his place by being rebuffed;

At no stage are the four women shown in any suggestively sexual pose and there is no sexual innuendo in the way the women are depicted.

AANA Code of Ethics clause 2.4

28. *There has been no breach of clause 2.4 of the Code.*

29. *UTA does not concede that the appearance of three other women dressed in bikinis to appear in the commercial contravened clause 2.4 of the Code. However their appearance in the advertisement is unnecessary and will be deleted.*



30. *The four women from the car are dressed appropriately in casual clothing, their clothing was not revealing and they were not revealingly dressed. The advertisement does not contain any images of these women which are highly sexually suggestive or inappropriate for the relevant audience; the relevant audience being adult car owners watching YouTube.*

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 complainants' concerns that the advertisement:

- Is sexist
- Portrays women as stupid and helpless and bad drivers
- Suggests that their only function is as objects of sexual desire
- Portrays women as sexual objects
- Includes sexist remarks made by Charlie Sheen.

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

The Panel noted that they had previously considered different versions of this advertisement on Free TV in case 0022-19, which was the subject of an Independent Review and subsequently found to breach the Code.

The Panel noted that there were two versions of this YouTube advertisement, a 72 second version and a cut-down 30 second version. The 72 second version features additional scenes including a conversation between the women in the car, a longer sequence of the car's brakes failing, one of the women describing to Charlie Sheen that the brakes failed, and his reaction, and the scene in the cabin of the boat with the additional women and Warwick Capper.

The Panel noted that in case 0022-19 the Panel had considered a similar 60 second version of the advertisement. The Panel noted that the main difference between the previously considered 60 second advertisement and the 72 second advertisement was additional dialogue from the women. The Panel noted that the additional scenes were one of the women saying, "You girls I can't wait to go for a swim" and one of the women saying "brakes failed." Charlie Sheen responds, "That's terrible."

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that *'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'*



The Panel noted that the Practice Note for Section 2.1 of the Code of Ethics provides the following definitions:

Discrimination – unfair or less favourable treatment

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.

The Panel noted the complainants' concerns that the advertisement is sexist and portrays women as stupid, helpless and bad drivers.

The Panel first considered the 72 second version of the advertisement under Section 2.1 of the Code.

The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

“The Panel noted that the women in the advertisement were depicted as driving down a long, flat pier while screaming because the foot brake did not work. The Panel considered that the driver did not attempt to use the handbrake, nor did she appear to be looking for any other way to stop the car. The Panel considered that the passengers in the car also did not attempt to find a solution to the situation and instead were depicted waving their arms in the air and screaming. The Panel considered that the advertisement depicted the women as not knowing how to stop a car in an emergency situation. The Panel considered that there is a negative, gender-based stereotype which states that women are bad drivers and considered that in this instance the portrayal of the women in the advertisement was consistent with this negative stereotype.

The Panel considered that the voice over stating “avoid unexpected situations, get your car serviced at Ultra Tune” gave the impression that the car brakes had failed because the woman had not had her car serviced and this also perpetuated the negative stereotype that women are bad drivers and don’t know how to look after their cars.”

The Panel noted the advertiser’s submission regarding the Panels’ previous findings on this point, specifically:

“12. The previous Panel also considered that the advertisement depicted the female driver as not knowing how to stop a car in an emergency situation, by reason of the fact that she did not attempt to use the handbrake and nor did she appear to be looking for another way to stop car. The previous Panel then stated that it considered this aspect of the advertisement portrayed a negative, gender-based stereotype of women being bad drivers.



13. The previous ruling is flawed from a safety perspective and demonstrates the previous Panel's limited understanding of potential problems of employing the handbrake as a means of emergency braking in the confines of the single lane pier shown in the advertisement with pedestrians on the side. Using the parking brake at speed can be dangerous and lead to a loss of control from locking of the wheels. Whilst this will slow the car quickly it can result in a sideways skid making the vehicle uncontrollable and possibly hitting the pedestrians and then skidding off the pier sideways.

14. Accordingly, the suggestion by the previous Panel that a handbrake stop should have been included in the advertisement would result in the advertisement being contrary to clause 2.6 of the Code.

15. The advertisement contains no suggestion that the cause of the brake failure was the consequence of any actions taken by the female driver. To the contrary the suggestion put forward is that to avoid such an unexpected situation car owners, be they male or female, should have the car serviced by Ultra Tune."

The Panel noted that in the advertisement the women were driving along a long flat road, went through a safety barrier and onto a flat pier, the advertisement cuts away to Charlie Sheen before returning to the women going off the pier into the water. The Panel considered that the car takes a long time to reach the end of the pier and depicts the women with their arms waving in the air and screaming. The Panel considered that the overall impression of this scene is that the women were travelling at low speeds and that the risk of using the hand brake in this situation would have been less severe than going off the end of the pier.

The Panel considered that the voice-over's statement, "avoid unexpected situations, get your car serviced at Ultra Tune' is a suggestion that the brakes had failed due to a failure to get the car serviced regularly.

Consistent with the determination in case 0022-19 the Panel considered that the advertisement perpetuated the negative stereotype that women are bad drivers and don't know how to look after their cars.

The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

"The Panel considered that there was a contrast between the depiction of the men and the depiction of the women in the advertisement. The Panel considered that the men in the advertisement were depicted as being fully clothed and were shown to be the



'rescuers' with Charlie Sheen helping the women out of the water, Warwick Capper in control of the boat, and the Ultra Tune man arriving to assist with the car. In contrast, the Panel considered that the four main women in the advertisement were dressed in casual clothing and were depicted as helpless and in need of rescuing. Additionally, the Panel noted that there were three women in the advertisement who were depicted wearing bikinis. The Panel considered that these women did not have active roles in the advertisement and appeared to be just in the advertisement for decoration.

The Panel acknowledged that in the advertisement one of the women is seen to take Charlie Sheen's phone in order to contact Ultra Tune. The Panel considered that although this does show the woman taking an active role, it is one brief part of a longer advertisement where the women are otherwise shown as helpless or inactive. The Panel considered that while one of the women takes his phone, the other three are depicted as standing around in wet clothing taking no action and not seeming to react to the situation in any way. The Panel considered that this brief scene does not counteract the overall impression that the women have no personal control and are in need of the assistance of men.

The Panel noted the advertiser's submission regarding the Panels' previous findings on this point, specifically:

"6. In reaching its decision the previous Panel considered that there was a contrast between the depiction of men and the depiction of women in the advertisement, that the women were depicted as:

- Helpless;
- In need of rescuing and assistance by men; and
- Had no personal control:

This was in error.

7. The advertisement in fact depicts the opposite as it depicts the women's ability to overcome by themselves the "unexpected situation" they found themselves consequent upon the car's brakes failing. Specifically:

- (i) The women were not depicted as being helpless as they undertook their own rescue by swimming to the nearest object, Charlie Sheen's boat, and boarding the boat unaided.
- (ii) The women were not in need of rescuing by any men because they effected their own rescue.
- (iii) The women took control of the situation both by swimming to boarding the boat unaided.



8. Further, upon boarding the boat, the vehicle driver takes control of the situation by requesting the loan of a phone to call Ultra Tune Roadside Assist. Importantly, in this section of the advertisement, the vehicle driver not only takes control of the situation by requesting a telephone to call out Ultra Tune Roadside Assist but importantly:

- By rolling her eyes and her body movement, the driver mockingly dismisses Charlie Sheen and his belief that when the driver asked for a phone all she wanted was to take a selfie of her with Charlie Sheen
- The driver demonstrates that she has no interest in Charlie Sheen and his stupid suggestion of a selfie by grabbing the phone out of Charlie Sheen's hand (see screenshot below).

9. It is not conceded that the advertisement depicts Charlie Sheen's thoughts of "winning" in a predatory sense, but if that is the case, such thoughts were clearly dashed by the vehicle driver's mocking putdown of Charlie Sheen. The female driver presents as:

- a strong, confident, independent woman who has taken control of the unexpected situation in which she found herself in (coincidentally the actress in question was also at one stage a boxer); and
- not interested in Charlie Sheen.

This is intentionally the most powerful part of the advertisement. Further, none of the other women from the vehicle showed any interest in Charlie Sheen.

10. Given that the driver of the vehicle had taken control of the unexpected situation in which she found herself in, the previous Panel's ruling which suggested that it was wrong not to depict the other the three passengers in the car as doing something to take control of the situation was nonsensical. If the driver of the vehicle is taking necessary control of the situation, what other role is there for the passengers to play?"

The Panel considered that the women were depicted as being in the water near the pier and the boat. The Panel considered that the only depiction of the women in the water showed them flailing around and not swimming in any particular direction. The Panel considered that Charlie Sheen's comment 'women overboard' was a suggestion that they were in need of rescuing. The Panel considered that the women are not shown swimming to the boat and while they do climb the ladder on their own there is no depiction in the advertisement as to how they got there, and if they were aided to reach the boat.



The Panel considered that the women were depicted as being very close to the pier, and that the boat was not necessarily the closest thing to swim to. The Panel noted that once on board the boat one of the women comments that the brakes failed, and the driver asks for the phone and takes the phone off Charlie Sheen to contact Ultra Tune. Consistent with the previous determination, the Panel considered that this brief scene does not counteract the overall impression that the women have no personal control and are in need of the assistance of men. In particular, the Panel noted that none of the women ask to be returned to shore (which is close by), asked if the others were OK, tried to find dry clothing or contact anyone other than Ultra Tune in relation to their situation. Further, the women are then depicted drinking champagne and smiling while being entertained by Charlie Sheen, and when the man from Ultra Tune arrives it is Charlie Sheen, not any of the women, who respond to him.

The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

“The Panel acknowledged the complainants’ concern that the ‘rubbagirlz’ numberplate on the car was a reference to the women being sex toys. The Panel considered that this interpretation of the meaning of the numberplate was unlikely. The Panel however considered that the description ‘rubbagirlz’ did objectify the women and did add to the dehumanisation of the women.

The Panel considered that there was a cumulative impression of the four main women in the advertisement as ‘doll like’ or playthings. The Panel considered that this impression was generated by the Barbie-like car, the numberplate ‘Rubbagirlz’, the women’s doll-like appearance and the clothing of the woman. The Panel considered that the women in the advertisement were dehumanised and shown as having little capacity to speak or act. The Panel considered that one of the women in the advertisement was shown with a lollypop and speaking in a child-like voice and this added to the overall impression of the woman being dehumanised and only there for the men to look at or play with. The Panel considered that the women are shown to not have the capacity to help themselves, first when driving and then from being taken advantage of by Charlie Sheen. The Panel considered that the depiction of the four women amounted to an impression that the women are doll-like, not in control and there as objects.”

The Panel noted the advertiser’s submission regarding the Panels’ previous findings on this point, specifically:

“11. The previous Panel stated that it considered that the advertisement led to a cumulative impression that the four main women in the advertisement were “doll like” or “playthings” by reason of four factors: the Barbie-like car, the numberplate “rubbbergirlz”, the women’s doll like appearance and the clothing of the women. Addressing each of these alleged factors:



- (a) The convertible vehicle in question was a popular make of vehicle within a niche market which usually sold in bright or pastel colours. UTA contends that the previous Panel denigrated all women who own such a vehicle by in effect suggesting that only “Barbie like” women own such vehicles.
- (b) The numberplate sought to capitalise on previous advertising campaigns for the sale of tyres which campaigns have been permitted.
- (c) The actresses in question, with the possible exception of one actress, did not present with doll like appearances – see below photograph. It was wrong for the previous Panel to denigrate and vilify these women’s appearances in this way.
- (d) The previous Panel said that the women’s clothing was also part of their cumulative impression. There was no elaboration or explanation of why or how it is said that the clothing all four women wore was inappropriate or could lead to the conclusion of the women having a “doll -like” or “playthings” appearances.
- (e) The women’s clothing is not out of the ordinary with the way women are dressed both in television advertisements and in day-to-day life.
- (f) This aspect of the previous Panel’s Ruling was in fact contradicted by other parts of the Ruling where the previous Panel acknowledged that that the four women in the advertisement were dressed appropriately in casual clothing, that the clothing was not revealing and that the women were not revealingly dressed.”

The Panel considered that the model and colour of the car shown in the advertisement highly resembled the well know Barbie car and that this was one element which added to the overall impression of the women as doll-like. The Panel considered that while the depiction of attractive women in itself does not amount to the impression that the women are doll like, the use of four highly-styled attractive women in a vehicle very reminiscent of a Barbie car with the numberplate ‘rubbagirlz’ was a depiction which created an overall impression of the women being doll-like or playthings. The Panel acknowledged that the term ‘rubbagirlz’ was a reference to previous advertisements for tyres by the advertiser, however considered that they had to consider the content of the current advertisement as it would appear to the audience, and not as part of a longer campaign. The Panel considered that the numberplate in the advertisement was not in the context of promoting tyres and added to the impression of the women being ‘rubber’ or plastic-like. Consistent with the previous determination the Panel considered that the depiction of the four women amounted to an impression that the women are doll-like, not in control and there as objects.



The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

“The Panel acknowledged the concern in the community relating to the use of the actor Charlie Sheen particularly in relation to past behaviour in relation to women. The Panel considered that in this version of the advertisement the comments made by Charlie Sheen are predatory and the advertisement capitalises on this negative representation in the treatment of the women in the advertisement. The Panel considered that advertisers are free to use whoever they wish in advertisements, however in this instance the use of Charlie Sheen with catch phrases directly referencing his real-life persona added to the overall power imbalance in the advertisement and the ridiculing and humiliation of the women.”

The Panel noted the advertiser’s response in paragraphs 8 and 9 above, that the female driver in the advertisement presents as a strong, confident woman who has taken control of the unexpected situation and neither she or any of the other women in the advertisement show interest in Charlie Sheen.

The Panel considered that the comments made by Charlie Sheen are predatory and the advertisement capitalises on this negative representation in the treatment of the women in the advertisement which adds to the overall power imbalance in the advertisement. The Panel considered that the depiction of the women from the car, along with additional women in bikinis, in the cabin of the boat with Charlie Sheen gave the impression that the women were accepting of his behaviour, happy to be entertained by him, and happy to let him take control of the situation by deciding when and where they should go.

The Panel noted the advertiser’s submission regarding the Panels’ previous findings on this point, specifically:

- “5. The previous Panel failed to identify a prevailing community standard against which the advertisement was judged, and also failed to properly take into consideration that:
 - (a) The context of the advertisement which is of a scenario which is manifestly one which is that of a light-hearted, exaggerated, fantasy scenario.
 - (b) The AANA’s guidelines state that: “advertisements can humorously suggest stereotypical aspects of an ethnic group or gender, provided the overall impression of the advertisement does not convey a negative impression of people of that group”.”

The Panel considered that the recent #metoo movement indicated a growing concern in the community around how women are depicted and treated. The Panel noted that prevailing community standards are that the depiction of women in advertising



should not discriminate against or vilify the women in general, or depict women in a way which is ridiculing, implying that they are inferior to men or otherwise depicting negative female stereotypes.

The Panel noted the Practice Note for the Code provides:

“A negative depiction of a group of people in society may be found to breach section 2.1, even if humour is used. The depiction will be regarded as a breach, if a negative impression is created by the imagery and language used in the advertisement. Advertisements can humorously suggest stereotypical aspects of an ethnic group or gender, provided the overall impression of the advertisement does not convey a negative impression of people of that group.”

A minority of the Panel considered that the advertisement does not convey a negative impression of women as their actions and depiction was in the context of a humorous and exaggerated fantasy scenario which did not create an impression that all women can't drive or that humiliates women in general.

The majority of the Panel considered that the fantasy element of the advertisement added to the overall impression of the women as doll-like, and that while humour is used a negative impression of the women is still created by the imagery and language in the advertisement.

The majority of the Panel considered that the advertisement perpetuated the negative stereotype that women can't drive, depicted the women in need of rescuing by men and dehumanised the women and depicted them as doll-like sexual objects to be used by men. The majority of the Panel considered that the cumulative effect of the advertisement amounted to a depiction which humiliates the women and depicts them receiving less-favourable treatment because of their gender.

The Panel determined that the 72 second version of the advertisement did depict material in a way which discriminates against and vilifies a section of the community on account of gender and did breach Section 2.1 of the Code.

The Panel then considered the 30 second version of the advertisement under Section 2.1 of the Code. The Panel noted it had previously considered this version of the advertisement in case 0022-19, in which:

“The Panel noted that the scene of the women driving is not as long as in the 60 second version, however the women are still depicted as waving their arms in the air and to not be taking action to use the handbrake. The Panel considered that this is emphasised by the voice-over suggestion that the accident had taken place because the women failed to service the car. The Panel considered that this version of the advertisement contained a negative stereotype that women can't drive.

The Panel considered the depiction of the women in the advertisement and considered



that the women are dehumanised and do not appear to have the capacity to speak or act. The Panel considered there is a power imbalance depicted between men and women in the advertisement, with the women seen to be helpless and in need of rescuing. The Panel considered that although this does show one woman taking an active role, it is one brief part of an advertisement where the women are otherwise shown as helpless or inactive. The Panel considered that this brief scene does not counteract the overall impression that the women have no personal control and are in need of the assistance of men.”

Consistent with the previous determination, the Panel determined that the 30 second version of the advertisement, which is the same as one of the previous 30 second advertisements considered by the Panel, creates and overall impression that the women in the advertisement can't drive, are depicted in need of rescuing by men, and have no personal control.

The Panel determined that the 30 second version of the advertisement did depict material in a way which discriminates against and vilifies a section of the community on account of gender and did breach Section 2.1 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.”

The Panel noted the complainants’ concerns that the advertisement suggests that the women’s only function is as objects of sexual desire, portrays women as sexual objects and includes sexist remarks made by Charlie Sheen.

The Panel first considered whether the 72 second version of the advertisement contained sexual appeal. The Panel considered that the advertisement featured four attractive women who are involved in a fantasy-style scenario where they are rescued by Charlie Sheen. The Panel considered that the depiction did amount to sexual appeal.

The Panel then considered whether the advertisement was exploitative. The Panel noted that part (a) of the definition of exploitative in the Practice Note for the Code, is “taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities”.

The Panel noted the advertiser’s submission regarding the Panels’ previous findings on this point, specifically:

1. That the three other women who featured in the advertisement were dressed in bikinis and were depicted as decoration and had no voice or power.... and that the depiction of these three women as background objects or decoration



added to the overall impression of the advertisement which is that all the women on the boat were there for the sexual pleasure of Charlie Sheen.

The advertiser responded that: *'UTA agrees to delete this scene from the advertisements.'*

The Panel noted the advertiser's agreement to remove this scene and encouraged the advertiser to do so. However the Panel is required to consider this version of the advertisement as it is currently being published.

2. The four main women in the advertisement are depicted as doll like objects, are shown to be passive not active, and to have no real voice and the previous Panel then referred back to its reasoning in respect to clause 2.1 of the Code to support its ruling in respect to clause 2.2 of the Code.

'for the reasons detailed above in respect to clause 2.1 of the Code, UTA emphatically rejects the proposition that the images of the four main women in the advertisement are depicted as doll like objects, are shown to be passive not active, and to have no real voice.'

3. That the use of Charlie Sheen in the advertisement was likely to be against the prevailing community standards relating to the depiction of women in exploitative manner.

'... clause 2.2 of the Code is not contravened by the use of a particular person be it Charlie Sheen or anyone else. The previous Panel was in error in treating the presence of Charlie Sheen with the four actresses as in itself providing a basis for finding a contravention of clause 2.2 of the Code.'

4. The use of Charlie Sheen offered an implied endorsement of Charlie Sheen's reputation for predatory behaviour and the objectification of women.

'..., as analysed to above the driver's putdown of Charlie Sheen constitutes a rejection of male predatory behaviour and the objectification of women.'

Consistent with the determination in case 0022/19, and the consideration of Section 2.1, the Panel considered that the sexual appeal of the women is used in a way which represents them as doll-like objects.

The Panel noted that the use of Charlie Sheen in itself is not a breach of Section 2.2 of the Code. Consistent with the determination in case 0022/19, and the consideration of Section 2.1, the advertisement uses Charlie Sheen's reputation of being a predatory person, the use of Charlie Sheen in a role which is consistent with his notoriety gives a strong impression of objectification and exploitation of the women. The Panel considered that the driver's reaction to Charlie Sheen when he offered to take a selfie,



may have been dismissive of this particular behaviour, but it was not a rejection of his overall predatory behaviour. The Panel considered that the depiction of the woman drinking champagne and allowing Charlie Sheen to speak to the Ultra Tune worker on their behalf added to the impression that they were there for the sexual pleasure of Charlie Sheen.

The Panel considered that the combination of the depiction of the women as doll-like objects and the use of Charlie Sheen in a predatory manner did amount to a representation which met part (a) of the definition of exploitative in the Practice Note for the Code by taking advantage of the sexual appeal of the women, by depicting them as objects or commodities”.

The Panel further noted the advertiser’s response that section 2.2 of the Code only applies to visual images which are exploitative and degrading and that there are no visual images in the advertisement which are exploitative and degrading of the women. Specifically, the advertiser stated: *‘ clause 2.2 of the Code covers images and other material which visually presents as employing sexual appeal in a manner which is exploitative or degrading. No aspect of the images of the four main women visually presents these women as employing their sexual appeal in a manner which is exploitative or degrading to them, and UTA refers to and repeats its above analysis in respect to clause 2.1 of the Code.’*

The Panel noted the Practice Note for the Code provides:

“For material to breach this section of the Code, it must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable under this section. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative of or degrading to any individual or group of people. The Community Panel may have regard to the context or medium in which the material appears.”

The Panel considered that there is no requirement in the Code for Section 2.2 to only be applied to visual images, rather the Panel considered that the depiction of the women must be taken in the context of the overall impression of the advertisement and also the medium in which the material appears, in this case Youtube.

The Panel then considered part (b) of the definition of exploitative in the Practice Note for the Code, which is “focussing on their body parts where this bears no direct relevance to the product or service being advertised”.

The Panel noted the advertiser’s response that the Panel should adopt the same approach for this advertisement as it did in the previous ruling. The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

“The Panel considered that the four women appeared to be dressed in bikinis with casual clothing over the top, and that the clothing was not revealing and the women



were not revealingly dressed. The Panel considered that when the women are in the car the focus is on the women's faces and not any body part. The Panel considered that the women's full bodies can be seen after they climb onto the boat and that while the women's cleavage is visible there is an equal focus on their entire bodies and no focus on a body part. The Panel noted the community concern around the use of the sexual appeal of the women with no direct relevance to the service being advertised, however considered that the depiction of the women did not meet part b of the definition of exploitative as there was no particular focus on the women's body parts."

Consistent with the determination in case 0022-19, the Panel considered that the current advertisement did not meet part b of the definition of exploitative as there was no particular focus on the women's body parts.

Finding that the advertisement takes advantage of the sexual appeal of the women by depicting them as objects or commodities, the Panel found that the advertisement was exploitative of the women.

The Panel then considered whether the advertisement was degrading. The Panel noted the definition of degrading in the Practice Note is "lowering in character or quality a person or group of people".

The Panel noted that in the consideration of the 60 second advertisement in case 0022-19:

"The Panel noted the complainants' concerns that advertisement was degrading of, and demeaning to, women.

A minority of the Panel considered that the ad was degrading of the women – showing them as potential sexual conquests for Charlie Sheen and depicting a power imbalance between him and the women in the advertisement. The minority of the Panel considered that the comment made by Charlie Sheen in having no towels added to the impression that he was in a position of power and was able to take advantage of the women's situation.

The majority of the Panel considered that the advertisement did not degrade women as they are depicted as victims being taken advantage of by Charlie Sheen. The majority of the Panel considered that depicting women as victims does not lower them in character or quality, rather it lowers the character of the perpetrator. The majority of the Panel considered that the advertisement did not use the sexual appeal of the women in a way which is degrading to the women."

Consistent with the determination in case 0022-19, the Panel considered that the current advertisement did not use the sexual appeal of the women in a way which is degrading to the women, or women in general.



The Panel determined that the 72 second version of the advertisement did employ sexual appeal in a manner which was exploitative of the women in the advertisement.

The Panel then considered the 30 second version of the advertisement under Section 2.2 of the Code. The Panel noted that this version of the advertisement includes Charlie Sheen's comments about feeling lucky and not having towels and considered that these phrases are predatory and are like to be against the prevailing community standards relating to the depiction of women in an exploitative manner.

The panel noted that the scene with the three bikini-clad girls does not appear in this version of the advertisement, however the depiction of the four main women as being available as potential conquests for Charlie Sheen is a depiction which would be considered exploitative.

The Panel determined that the 30 second version of the advertisement did employ sexual appeal in a manner which was exploitative of the women in the advertisement.

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 agreed that the relevant audience for the advertisement is people watching Youtube videos and considered that the targeted audience would be mostly adults.

The Panel considered the 72 second version of the advertisement, and then noted that when it previously considered the slightly shorter advertisement in case 0022-19 it had considered:

"The Panel considered that the advertisement did not contain overt nudity. The Panel considered that the depiction of the women in the car focussed on the women's faces and that while some cleavage may be visible this was not the focus of the scene and was not a depiction which would be inappropriate for the relevant broad audience. The Panel considered that the women's full bodies can be seen after they climb onto the boat, and that the women's cleavage may be visible, but this is not excessive and is consistent with general fashion. The Panel noted that one of the women was wearing a bikini with overalls, and that the side of her breast is visible. However, the Panel considered that the woman's bikini top covers her appropriately and is consistent with normal dress which would be seen near a beach.

The Panel noted that the three women shown already on boat were in revealing bikinis, however considered that this depiction is very fleeting and lasted for less than a second. The Panel considered that the women are in the background and are not the focus of the scene and were unlikely to be noticed by most viewers. Further, the Panel considered that their depiction is consistent with what would usually be worn on boats and did not amount to a depiction of nudity which would be inappropriate for the



relevant broad audience.

The Panel noted that the advertisement included some sexual innuendo, including comments made by Charlie Sheen about feeling lucky and not having towels, as well as the comment one of the women made about the boats being big before putting a lollypop in her mouth. The Panel considered that this innuendo was mild and would only be understood by adults and would not be understood by the younger audience.

The Panel acknowledged that some members of the community may not like the use of Charlie Sheen, but his history and the references to his character would not be understood by a younger audience and therefore would not be inappropriate for this audience. Further, the use of Charlie Sheen in itself did not amount to a depiction of sex, sexuality or nudity which would be inappropriate for the broad audience.”

The Panel noted the advertiser’s submission that ‘*There has been no breach of clause 2.4 of the Code.*

29. *UTA does not concede that the appearance of three other women dressed in bikinis to appear in the commercial contravened clause 2.4 of the Code. However their appearance in the advertisement is unnecessary and will be deleted.*

30. *The four women from the car are dressed appropriately in casual clothing, their clothing was not revealing and they were not revealingly dressed. The advertisement does not contain any images of these women which are highly sexually suggestive or inappropriate for the relevant audience; the relevant audience being adult car owners watching YouTube.’*

Considering this longer version of the advertisement, the Panel considered that the additional footage did not contain any additional content that increased the depiction of sex, sexuality or nudity. Consistent with the determination in case 0022-19, the Panel considered that the women depicted in the current advertisement were clothed appropriately and that the advertisement did not contain nudity. The Panel considered that the advertisement contained only mild innuendo which would only be understood by adults and not by younger audiences.

The Panel determined that the 72 second version of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered the 30 second version of the advertisement under Section 2.4 of the Code. The Panel considered that the advertisement did not contain overt nudity and that the four women in the advertisement were dressed appropriately in casual clothing. The Panel considered that the sexual innuendo in the advertisement, including Charlie Sheen’s comments about feeling lucky, being out of towels and winning, was mild and would not be understood by a younger audience. The Panel found that the 30 second version of the advertisement did treat the issue of sex,



sexuality and nudity with sensitivity to the relevant broad audience.

The Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Panel noted that the driver in both versions of the advertisement was seen to be wearing stiletto shoes. The Panel noted that there are no laws in Australia that detail what footwear is appropriate. The Panel considered that relevant laws would require that the driver be in control of the vehicle. The Panel considered that the woman is shown pressing on the brake pedal easily and that her footwear is not impacting her control of the vehicle. The Panel considered that the woman is shown to be in control of the vehicle until her brakes fail and that the depiction of driving with high heels, while not ideal, is not against prevailing community standards on safe driving.

The Panel noted that in both versions of the advertisement one passenger is briefly shown with her seatbelt strapped slightly below her shoulder. The Panel considered that the women are in a convertible and it can be seen that the seatbelt originates further back than in a conventional car. The Panel considered that the woman is not wearing her seatbelt inappropriately or in a manner which would be against prevailing community standards or legislation on seatbelt safety.

The Panel considered that the vehicle in both versions of the advertisement appeared to be travelling along a beach road in an urban area and that the relevant speed limit for this area would likely be 50km per hour or less. The Panel considered that if the vehicle was travelling at this speed limit along a flat road without accelerating, even without brakes the car would likely have stopped before going off the end of the jetty. The Panel considered that this may give an impression of speed to the advertisement, however considered that this impression was likely unintentional and not the focus of the advertisement. The Panel considered that in the context of an advertisement which is an exaggerated, fantasy scenario the depiction which gave an impression of travelling in excess of the speed limit was not a depiction which would likely be against prevailing community standards on health and safety. The Panel considered that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Sections 2.1 and 2.2 of the Code and upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser has not provided a response to the Panel's determination within the timeframe requested. Ad Standards will continue to work with the advertiser and other industry bodies regarding this issue of non-compliance.