



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0022/19
2	Advertiser	Ultra Tune Australia
3	Product	Automotive
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	23/01/2019
6	DETERMINATION	Dismissed
7	Date of reviewed determination	08/05/2019
8	Determination on review	Upheld - Modified or Discontinued

ISSUES RAISED

- Other Social Values

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Degrading - women
- 2.2 - Objectification Exploitative - women
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.4 - Sex/sexuality/nudity S/S/N - sexualisation of children
- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features four women in a pink convertible driving to the beach. The brakes on the convertible fail and the car drives off a pier into the water. Charlie Sheen is fishing on his boat when he spots the women in the water and they board his boat. He makes a comment that they are all out of towels and he is 'winning'. One of the women asks him for his phone and he mistakenly believes that she is asking for a selfie. She takes his phone and uses it to contact Ultra Tune. In the longer versions of the advertisement the girls are seen in the cabin of the boat with Charlie and Warwick Capper is shown as the Skipper of the boat. The Ultra Tune van arrives and the repair man asks if they are having boat trouble. Charlie responds that no, they are having car trouble.



THE COMPLAINT

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

- 1. The advertisement portrays women in a degrading manner. The advertisement is based on the pretence that women are unable to control a vehicle, are helpless, lack intelligence, want to take selfies during a crisis and need to be rescued by men.*
- 2. The advertisement is exploitative of women. During the advertisement Charlie Sheen states that he does not have towels, implying that the women will be naked. Coupled with the reputation of Mr Sheen, the exploitative intention is clear.*

The advertisement portrays women in a very stereotypical and sexual way. They are all wearing short, tight dresses, squealing, driving around in a hot pink car, and crash the car into the water. It reinforces the stereotype of women drivers being incompetent, and women being clueless and vulnerable in general. And then the big brave man comes over to save them, but actually just hopes to get lucky. The sexual comments that Charlie Sheen makes are inappropriate and degrading.

Charlie Sheen, a convicted domestic violence perpetrator making sleazy eye rolls and in general objectifying women. It was sexist, unnecessary and in this time of me too and the excessive domestic violence currently occurring this type of ad is just inappropriate. We need to teach our males that this type of behaviour is not ok and whoever sanctioned this ad needs some proper education in how to treat women and the dangers of overt sexuality and mistreatment of women. Just stop the ad being shown please. My male partner has similar views.

It is completely unacceptable to be screening such sexist advertising that objectifies women so obtusely. I have young kids as do many other people watching The Australian Open. Women who look like they are falling out of their outfits and who have Charlie Sheen lasciviously looking them over when they are asking for help is a terrible example to young children, boys or girls. This is daytime television viewed by children everywhere. The kids should be watching their heroes set an excellent example on the court, not watching how to demean women to being a piece of meat. I, for one will never want to use Ultra Tune and will encourage all other mums at our school to not consider ever using them either.

The women in the advertisement are highly sexualised, and portrayed as incompetent, reckless drivers. Their sexualisation reaches the extent of objectification, as Charlie Sheen openly ogles them, and makes crude comments with sexual implications. The advertisement takes the 'damsel in distress' narrative to an extreme, sexual level, and highly dehumanises women.



My primary objection to the advertisement is that it is blatantly sexist. Featuring four young women as helpless and hysterical when their car brakes fail, the sexism continues as they climb aboard the boat sparsely dressed with pouting lips. It exhibits the sort of casual, insipid sexism of advertisements that might have aired two or three decades ago.

In addition to the outrageously offensive and sexist themes of this commercial, I believe the most disturbing element is the unsafe driving practices demonstrated in the commercial. The ad depicts a woman driving the vehicle while wearing heels, which is strongly discouraged by road safety experts, her front passenger is not wearing her seatbelt correctly (it is pulled down well below her shoulder), and the passengers in the back do not appear to be wearing seatbelts at all. In a time where road death statistics are at such high levels, it is so disappointing that you would allow a commercial with such disregard for road safety to be aired on Australian television for young drivers to see.

THE ADVERTISER'S RESPONSE

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

Preliminary comments

A number of the complaints have specifically referred to the use of Mr Sheen in the advertisements. We refer to the comments of the Board in case number 029/18 that "advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code unless the use of the person is in some way depicting a breach of the Code".

Detailed responses

We note the issues raised by your letter (sections 2.1, 2.2 and 2.4 of the Code) and respond as follows:

2.1 Discrimination or Vilification Gender

Section 2.1 of the Code provides:

"Advertising or Marketing Communications shall not portray people 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 Practice Note elaborates on the above by saying:

Discrimination - unfair or less favourable treatment.

Vilification - humiliation, intimidation, incites hatred, contempt or ridicule.

(ii) The female actor is seen “rolling her eyes” and refuting Mr Sheen’s assumption of her requesting a “selfie” at her request for a mobile phone.

(iii) The female actor then takes charge and takes the mobile phone from Mr Sheen’s hand to call for Roadside Assistance.

(e) The use of Mr Sheen’s catchphrase “winning” (which has become part of modern pop culture) is to leverage his fame and not to vilify the female actors.

(f) The use of a male actor as the Roadside Assistance driver is not intended to be a statement or comment on gender roles. This character is an employee of the company and is a continuation from our previous advertisements.

Nothing in these advertisements encourages or incites any violence, harm or sexual predatory behaviour to any person regardless of gender.

There is no act in these advertisements that is intended to either incite contemptuous laughter (i.e. laugh at rather than with the characters), or urge on, stimulate or prompt to action, hatred, contempt or ridicule against women.

2.2 Objectification degrading – women

2.2 Objectification exploitative – women

Section 2.2 of the Code states that

“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 Practice Note elaborates on the above by saying:



Exploitive

(a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or

(b) focusing on their body parts where this bears no direct relevance to the product or service being advertised.

Degrading

lowering in character or quality a person or group of persons.

We refute the suggestion that the advertisements in any way exploits women.

(a) The use of female actors is not itself exploitative.

(b) The female actors' physical features are not the focus of the advertisements.

(c) Whilst the female actors are shown boarding the boat wet (having crashed into the water), the advertisements at no time focuses upon their bodies nor displays them in an exploitive or degrading way. The advertisements do not focus on their wet clothes.

(d) At all times, the female actors are fully clothed in normal casual day wear.

We refute the suggestion that the advertisements in any way degrades women.

(a) As mentioned above,

(i) The brake failure can happen to any person. The advertisements show the driver's foot pump the brake pedal to engage the brakes.

(ii) The female actor assists herself and calls for Roadside Assistance using Mr Sheen's phone (which she took off him).

(iii) The use of Mr Sheen's catchphrase is to leverage his fame and not to degrade the female actors.

(b) The advertisements neither diminishes the actors' self-respect or humiliates them in any way.

The advertisements contain no acts of violence nor portrays violence. Nothing in the advertisements encourages or incites the audience to commit any violence or harm to any person regardless of gender or race.



We refer to the Board's previous decisions in cases 0040/16, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 where the Board dismissed the complaints.

As noted above, the advertisements have a W rating classification.

2.4 Sex/sexuality/nudity S/S/N - general

Section 2.4 of the Code provides:

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

We also note what the Board said in case 0175/16 which was:

"The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative. The Board noted that the two women are wearing 'going out' clothing which is often revealing but considered that in this instance although the women's breasts are enhanced by the style of clothing they are wearing, their breasts are not the focus of the advertisement. The Board considered that, consistent with a previous determination in case 0093/12, while it is not necessary for the women to be wearing low-cut clothing, it is not an unusual style of clothing for women to wear on a night out and the women's physical features are not the focus of the advertisement."

At all times, the women were fully clothed in normal casual day wear. Their clothing is not the focus of the advertisements.

There is no nudity or sexual acts displayed in the advertisements.

We refer to the Board's previous decisions in Cases 155/14, 0040/16, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 where the Board dismissed the complaints.

Conclusion

For the reasons above, we do not believe the advertisements breaches the Code in any way, include any other parts of the Code not directly referred to above.

THE DETERMINATION

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



The Panel note the complainants' concerns that the advertisement features the actor Charlie Sheen, that the advertisement portrays women as unintelligent, that the advertisement depicts the women as sexual objects, that the advertisement is overly sexualised for a child audience and that the advertisement features driving practices which are unsafe.

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

The Panel noted the complainants' concerns that the advertisement features well know actor Charlie Sheen. The Panel noted the concern around the use of this actor in an advertisement. However the Panel considered that advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code, unless the depiction of the person in the advertisement is in some way depicting a breach of the Code.

The Panel considered the depiction of Mr Sheen in the advertisement and noted that his history was not mentioned in the advertisement and that not all viewers would be aware of who he was. The Panel considered that the advertisement did not reference or condone his prior behaviour, and that his depiction in the advertisement was not a depiction that breached a provision of the Code.

The Panel noted that case 0234/17 for Sportsbet featuring Canadian representative athlete Ben Johnson, a man most known for losing his Olympic title and world records due to admitting to drug use when competing, was upheld under Section 2.6 of the Code. In that case, the Panel noted:

"The advertisement also refers to "putting the roid in android"...a direct reference to the use of steroids and that this in conjunction with the depiction of Ben Johnson was a clear connection to his steroid use. The Board considered that, while there is no depiction of drug use in the advertisement, the advertisement makes numerous clear references to drug use and in the Board's view can clearly be considered to be a reference to drug use and that a strong reference to an activity does amount to 'depiction' within the terms of the Code of Ethics."

In case 0234/17 the advertisement played on the actor's drug use to make a strong reference to drug use, and it was this reference that amounted to a breach of the Code, not the use of Ben Johnson itself.

In case 0026/18 for an Ultra Tune advertisement featuring Mike Tyson, the Panel considered that Mr Tyson's history was not mentioned or referenced in the advertisement and was therefore not an issue which could be considered by the Panel. Similarly, in the current case the Panel considered that the depiction of Mr Sheen in this advertisement was not one which would breach any provision of the Code.



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 the complainants' concerns that the advertisement portrayed women as stupid and needing to be rescued by men.

The Panel noted the Practice Note to Section 2.1 of the Code which provides the following definitions:

"Discrimination – unfair or less favourable treatment

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

The Panel noted it had previously considered similar complaints about two of the same women whose car broke down on a rail crossing in case 0020/16, in which:

"The Panel accepted that the intent of the advertisement is to show an unrealistic situation. However the Panel considered that the women are depicted as unintelligent in the way in which they sit passively, with blank faces, in the car on the train tracks and also in the way they appear to not notice the oncoming train. This behaviour, in the Panel's view, makes the women appear unintelligent and presents them in a stereotypical helpless female situation. In the Panel's view, the depiction of the women's reaction to their situation is a negative depiction of women and does amount to vilification of women. The Panel considered that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did breach Section 2.1 of the Code."

On the other hand the Panel noted it had also previously considered similar complaints about the same two women whose car broke down and started a fire in case 0154/17, in which:

"The Panel noted in the current advertisement that as soon as the muffler falls off the car and catches fire, the women are shown to notice this and to contact Ultra Tune before they attempt to put out the fire. The Panel considered that unlike in case 0020/16, the women are shown to be aware of their situation and considered that while the women's handling of the fire extinguishers is not ideal, in the Panel's view the women are depicted as being aware and in control therefore there is no suggestion that these women are stupid or helpless with regards to their predicament. The Panel noted that a muffler falling off a car and catching fire, while uncommon, could happen to any person and considered that the advertisement's depiction of this happening to two women, who then take control of the situation,



does not discriminate against or vilify a person or section of the community on account of gender.”

The Panel noted that in the current advertisement the women are shown to have an accident after the brakes fail on their car.

The minority of the Panel felt that in the longer version of the advertisement the women’s actions between realising their brakes have failed and when they drive off the pier did show the women to be helpless and in need of rescuing. The minority of the Panel considered that the women shown going relatively slowly, waving their arms in the air and screaming was not a depiction of women who were in control.

The majority of the Panel considered that the women’s behaviour after the brakes fail was not a suggestion that the women were stupid or unable to drive, rather that they have had an accident as a result of circumstances outside of their control. The majority of the Panel considered that unlike in case 0020/16, the women are seen to take control of their situation as they climb aboard a boat and find a phone to contact Ultra Tune for help. The Panel considered that advertisers are able to use unrealistic or exaggerated situations to promote their service and that in this instance the depiction of the women was not demeaning or subjecting women to ridicule.

Consistent with the determination in case 0154/17, the majority of the Panel considered that while some members of the community may not like women being shown as being ‘rescued by a man’, or being depicted in wet clothing, the women are not depicted in a manner that is unfair nor in a manner that would be likely to humiliate or incite ridicule of women. In the Panel’s view the current advertisement does not discriminate against or vilify a person or section of the community on account of gender.

The Panel determined that the advertisement did not 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 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 the AANA Practice Note which provides guidance on the meaning of the terms exploitative and degrading:

Exploitative - (a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or (b) focussing on their body



parts where this bears no direct relevance to the product or service being advertised.
Degrading – lowering in character or quality a person or group of people.

The Panel noted the complainant's concern that the advertisement depicts women as highly sexualised which is unrelated to the product and therefore exploitative.

The Panel first considered whether the advertisement contained sexual appeal.

The Panel noted that the advertisement contains lines including one of the women making a comment that the boats are 'so big' while licking a lolly-pop. The Panel considered that the depiction of the four women in the vehicle and then on the boat having come out of the water, depicted the women as attractive. The Panel considered that the clothing worn by the women is consistent with beach attire and is not overly sexualised and there is no close-ups or lingering on the women's bodies. The Panel considered that the mild innuendo involved in the lolly-pop, the comment Charlie Sheen makes about not having towels, and that he is 'winning' when the women climb onto the ship, do not amount to taking advantage of the sexual appeal of the women.

The minority of the Panel considered that the actions of Charlie Sheen towards the women could be considered creepy and that he does treat the women as sexual objects.

However, if these depictions did amount to using sexual appeal in the advertisement, the majority Panel considered that the women were not depicted as objects or commodities rather that they are depicted as a group of women who have an accident and call Ultra Tune for assistance once they are able to do so, and is therefore not a breach of part (a) of the definition of exploitative.

The Panel considered that the women's bodies are not the focus of the advertisement and that there is no particular focus on the women's body parts in the advertisement, and that this is not a breach of part (b) of the definition of exploitative.

The Panel considered that the advertisement did not present the women in an exploitative manner.

The Panel acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative however the Panel considered that this use of women is not itself a breach of the Code.

The Panel considered that the women are not seen to react favourably towards Charlie Sheen, and this can be seen when one of the women takes the phone off him. The majority of the Panel considered that Charlie Sheen's behaviour in the advertisement may make people think less of him, but it does not lower in character



or quality the women in the advertisement and is not a degrading depiction of the women.

The Panel considered that the women in the advertisement were depicted as being in an unfortunate situation, however the Panel considered that this was a humorous depiction rather than degrading, and that the overall manner in which the women are depicted in the advertisement does not degrade or lower the quality of the women in the advertisement, or women in general.

The Panel considered that the advertisement did not use sexual appeal in a manner that was degrading to women

The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading to any individual or group of people and did not breach Section 2.2 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 noted the complainants’ concerns that the advertisement depicts women in a sexualised manner and that it was not appropriate for family viewing.

The Panel noted that the advertisement had been rated ‘W’ by CAD and considered that the advertisement would therefore not be placed in content that is directed to children.

The Panel noted that in the current advertisement the women are dressed as though they are going to the beach and that there is no nudity or sex in the advertisement. The Panel considered that the women are depicted being in wet clothing, but that this is a result of having driven into the water and the depiction is not sexualised in how they are shown. The Panel considered that while some comments in the advertisement may be considered to have sexual innuendo, these are mild and the overall impression of the advertisement is humorous and not sexualised and would not be inappropriate for the relevant broad audience.

In the Panel’s view the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and the Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered 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 the complainants' concerns that the driver was wearing high-heels which is not safe, and that the woman in the passenger seat was not wearing her seatbelt appropriately.

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 in the brief scene does not appear to impact 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 one scene of the advertisement the passenger is 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 advertisement did not depict material contrary to Prevailing Community Standards on health and safety. The Panel determined that the advertisement did not breach Section 2.6 of the Code.

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

INDEPENDENT REVIEWER'S RECOMMENDATION

The grounds for requesting a review of a determination of the Community Panel (the Panel) are as follows:

1. Where there was a substantial flaw in the Panel's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)
2. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided
3. Where there was a substantial flaw in the process by which the determination was made

The Appellant has requested a review of the above determination of the Panel and



has cited two grounds for the request:

1. Failure to properly consider prevailing community standards around violence against women and the representation of women as sexual objects in the media.
2. Section 2.1 Discrimination: unfair or less favourable treatment and gender stereotypes. Failure to consider properly the discriminatory representation of women as sexual objects in advertising, the sexual innuendo in the ad around taking advantage of these women's situation and underlying messages in the ad around women who have a certain look being 'ripe for the picking'.

While the appellant does not frame the review request grounds in the wording above, it is assumed that the grounds relied on are ground 1 and/or ground 3.

The appellant has submitted a lengthy and detailed review application which is reproduced here:

I wish to request a review of my complaint in relation to the UltraTune ad with Charlie Sheen that was shown regularly during the day and night Australian Open on Channel 9 for two weeks over January. In your letter dated 31 January 2019, the Panel determined it was not in breach of any sections of the Advertising Code.

I request a review on the following grounds:

1. Failure to properly consider prevailing community standards
In finding that the depiction of Charlie Sheen and his 'winning' of the women in the Ultratune ad is acceptable and that it does not violate any section of the Advertising Code, the Panel has failed to properly and adequately consider prevailing community standards around violence against women and the representation of women as sexual objects in the media.

Community context: the ad is situated in the current context of extreme violence against women in our community

Violence against women is of epidemic proportions in Australia. At the time that the Charlie Sheen Ultratune ads were being shown on Channel 9 in Melbourne, we had yet another horrific and devastating rape and murder of a young woman walking to her home at night. It has devastated the community, and needless to say her family and friends. Another recent and equally devastating example was that of a mother in NSW, who recently committed suicide after her former husband and father of her children had killed her two teenagers and himself in 2018. Just two incredibly upsetting and high profile examples of the broader epidemic we are facing.

It was in this context that Channel 9 and UltraTune continued to show ads representing a known abuser of women, Charlie Sheen, 'winning' (his trademark saying) over women being portrayed in a stereotypically 'dumb bimbo' manner, as evidenced by their inability to steer their car properly, their inability to do anything other than call the UltraTune man once in their predicament, and their willingness to head into Charlie Sheen's boat cabin despite his disinterest in their situation and his obvious desire to take advantage of them sexually. Implicit in all of this is that the women are 'easy' wins for the likes of Charlie Sheen. Given the choice of actor and the



scenario in the ad, all of these messages that are clearly implicit in the ad deliberately fly in the face of prevailing community standards around acceptable behaviour towards women. To then show this ad during the Australian Open when young girls and boys are watching was in further breach of those community standards, particularly in light of the kinds of messages that are acceptable to portray about women, and how they deserve to be treated by men, on prime time television. Prevailing community standards about women have changed: innuendo just as damaging as explicit images

Whilst it may have once been considered acceptable to denigrate and objectify women in this way and to use male celebrities with a history of violence against women in order to do it, the prevailing community standard no longer views this as acceptable. No doubt the advertiser and its target audience would argue that because there is no actual depiction of violence against women in the ad, and that there is also no actual sex or sexual activity in the ad, then the fact of the women and Charlie Sheen being used in this way in the ad is not of itself in violation of prevailing community standards. The advertiser uses innuendo and implications in the ad to objectify the women as sex objects (although the licence plate that reads 'rubbergirlz' leaves little to the imagination as to how these women are meant to be perceived) and also uses innuendo around Charlie Sheen's reputation as a 'winner' of women who cares only for how he can exploit them (clearly implied in the ad). It is the use of innuendo around the role of the women as sexual objects who are there to be taken advantage of, and Charlie Sheen as the 'winner' creepily taking advantage of the women's situation for his own pleasure, that - on the face of it - makes the complaint difficult to uphold. The visuals are deliberately not explicit; yet the message is absolutely clear.

It is the use of this kind of innuendo both around women's sexualised depiction in ads as well as around men of questionable character like Sheen being employed in ads to take advantage of that sexualisation of women that has allowed sexism and discrimination against women in the media - and in real life - to flourish. On the face of it, the advertiser can disingenuously claim that they could use any woman or man in the ad and it would make no difference to the message; equally, they can claim that the use of Charlie Sheen is purely innocuous - just a lad who the target audience recognises as a funny guy. Yet this argument takes the ad completely out of context and treats the views of women (and no doubt some men) who find this ad as unacceptable in light of prevailing community standards as nothing more than an over-reaction to what the ad makers would say is not actually there: we are seeing things in the ad that are not there to see, interpreting things in a way not intended by the ad. Making stuff up, so to speak.

Yet it is easy to refute the advertiser's claim in this regard. The simplest way to confirm that Charlie Sheen is being used precisely for his reputation as someone who has complete disregard for women, their safety and their wellbeing, would be to replace his role in the ad with someone who has quite the opposite reputation. Once you visualise this, the 'humour' in the ad (the target audience find this ad funny) vanishes. Why? Because the very basis of the 'joke' is the fact that Charlie Sheen is



known precisely for his behaviour towards women as represented in the ad (and worse) and that the target audience admires him for that behaviour, combined with the fact that the advertisers know that the target audience think it uproariously funny to:

- a) depict women in this demeaning light, particularly in the context of anything to do with cars because it is a stereotypically 'male' domain;
- b) paint Charlie Sheen as 'winning' over women in this context because that is sure to upset other women, in particular, due to his reputation; and
- c) use the stereotype of 'bimbos who are useful for ogling and sex, but certainly not deserving of male respect' and to depict men with reputations for treating women poorly like Charlie Sheen as winners, because it is considered funny to deliberately upset prevailing community standards whilst pretending it is unintentional to do so.

Take any one element of these factors out of the ad, and suddenly the target audience are not laughing so hard. The so-called humour on which the ad is based, is lost.

Choosing Charlie Sheen to deliberately upset prevailing community standards around objectification of and violence against women

Whilst it is acceptable for people who have committed crimes in the past to seek rehabilitation of both themselves and their image, Charlie Sheen's image in the ad seeks to build on his reputation as a 'winner' who capitalises on his position to take advantage of 'dumb bimbos' who are evidently so stupid or helpless as to drive their car directly into the water once the brakes had failed, and who are represented as nothing more than sexual objects who are there for Charlie Sheen's pleasure (evidenced by their portrayal; by Charlie Sheen's predatory behaviour and his intention to take advantage of them despite the fact he should be helping them; and by their number plate which reads 'RubberGirlz', which implies they are nothing more than sex toys. If the Panel has another interpretation of what the term 'Rubbergirlz' means in this context, then I would like to be provided with it in your response).

Given UltraTune's previous choices in their advertising, including Mike Tyson, it is clear UltraTune has chosen Charlie Sheen to deliberately upset the prevailing community standards around how women deserve to be depicted in the media. The comments on UltraTune's Facebook page that have been posted in response to the ad are evidence of this fact. The Facebook comments show that the target audience for the ad are well aware that the ad has been designed to generate controversy, and that the ad is deliberately designed to create division between the target audience (mostly men) who support the depiction of women in the ad, and people like me (mostly women) who are offended by it.

Whilst there may be some people in the community who are not aware of who Charlie Sheen is, of his history of violence against women or of his current quest to rebuild his brand, it is clear that the ad is not targeted to these people. Building on the controversy whipped up around its earlier ad with Mike Tyson, UltraTune have chosen to use the same strategy in this campaign: deliberately selecting Charlie Sheen because of his notoriety with both the target audience and the many women who are offended by him being placed in this context in this ad. Far from setting up a new or



different image of Charlie Sheen, the image builds on his reputation as a sex addict who does not care for women or their welfare, but who cares only for sex, alcohol and 'a good time'. All of this is clearly implied in the ad, the implications of which are unmissable for the target audience and for the women whom the advertisers seek to offend. Again, I direct the Panel to the Facebook comments about the ad to see the target audience's reactions expressing how pleased they are to see Charlie Sheen being used in this context in these ads, many of whom also comment that this will be sure to upset the 'feminists'.

There are many ways that Charlie Sheen could choose to be represented in advertising, to show that he feels remorse for his past actions or to show that he has redeemed and rehabilitated himself (Sheen also has known drug and alcohol issues, yet this ad shows him drinking what is presumably an alcoholic drink). This ad, however, shows him in exactly the context for which he is widely known. Even a brief internet search will tell you that much.

Charlie Sheen's history of violence against women is long and sordid:

- 1990 – shot his fiancé in the arm
- Oct 1994 – Sued by a student who claimed he repeatedly struck her in the face and head after she refused to have sex with him
- Dec 96 – Arrested for allegedly beating his girlfriend.
- June 97 – pleaded no contest to the charges and given one year suspended prison term and 2 years probation.
- 2006 – his wife Denise Richards got a restraining order against him alleging he was abusive and had threatened to kill her in front of her children.
- 2009 – Arrested on domestic violence charges after an alleged altercation with his 3rd wife, Brooke Mueller, who claimed he held a knife to her throat.
- Feb 2010- charged with felony of menacing and misdemeanour, 3rd degree assault and criminal mischief. Pleaded guilty and received 30 days rehab, 30 days probation and 36 hours anger management.
- Nov 2010 – accused of threatening to choke and kill a pornography performer
- March 2011 – estranged 3rd wife obtained emergency restraining order after Sheen allegedly threatened to cut off her head and send it in a box to her mother
- Oct 2014 – sued for assault and battery by dental technician after allegedly grabbing her breasts and punching her during a dental visit
- Dec 2015 – sued by ex-fiance for assault, battery and false imprisonment. Allegedly put an unloaded gun to her head and repeatedly pulled the trigger.
- April 2016 – ex-fiance obtained restraining order after recording of Sheen said he'd rather pay \$20,000 to get someone to kick her in the head than settle her law suit.
- June 2017 – sued by his ex-girlfriend for knowingly exposing her to HIV.

Given the context of violence against women in Australia, and in Melbourne in particular at the time the ad was being shown to women, men and minors during day and night tennis games (my three young daughters love watching the tennis, as do many minors), can the Panel explain how the Ultratune ad fits within prevailing community standards in relation to



- a. the standards of representing the issue of violence against women, and in particular when promoting men in ads who have a known record of violence against women as ultimate 'winners'?
- b. the standards of representing women as dumb bimbos who are incapable of driving or fixing a car and who, despite having just been thrown into the water in a car accident, are unquestioningly available for sex or at the very least for some 'fun' with Charlie Sheen? (Clearly implied by his actions and comments in the ad).

It is not just incorrect to accept as a given the so-called 'community' standards that the Panel is adhering to in its decision, but it is dangerous. Allowing community standards to be defined by the target audience of this ad demeans women and belittles the impact ads like these have in contributing to the culture of disrespect towards and violence against women. It also fails to take into account the fact that deeply negative views about how women deserve to be treated that were once regarded as the norm, have now become the exception: it is quite simply not acceptable to the community – and particularly to women - to celebrate men who are known to abuse women in advertising and to situate them in a context whereby they are lauded as winners over women - irrespective of whether their violent histories are referred to in the ad or not.

2. Section 2.1 Discrimination: unfair or less favourable treatment and gender stereotypes

In finding that the depiction of the women in the UltraTune ad is acceptable and does not violate any section of the Advertising Code, the Panel has failed to properly consider the discriminatory representation of women as sexual objects in advertising, the sexual innuendo in the ad around taking advantage of these women's situation and underlying messages in the ad around women who have a certain look being 'ripe for the picking'. Irrespective of whether or not the women are depicted as victims of their situation in the ad (some would argue that because they themselves call UltraTune, they are not represented as completely helpless), Sheen certainly intends to take advantage of them and the implication is that these kinds of women are ripe for the picking. Sheen is not rescuer, but a wolf in sheep's clothing; he fully intends to capitalise on his dumb luck and shares this joke with the audience; the women and the situation they find themselves in are the joke, not Sheen, who is the ultimate winner.

In addition to going against prevailing community standards, the ad clearly presents the women in a stereotypical way that amounts to discrimination on the basis of gender. It uses the harmful stereotype of the 'dumb bimbo' who knows nothing about driving, cars or even the motivations of men like Charlie Sheen and represents these women and their characteristics in a way that, in the context of ads about cars and driving, men are rarely - if ever - represented. It also presents the stereotype of these women as not deserving of Sheen's (or the audience's) respect: indeed, we as the audience are invited to ridicule them just as Sheen does; we are expected to judge them based on their looks (just as Sheen does), and to decide that they 'deserve what they get', simply because of the way they look and behave. Again, the comments about these women on UltraTune's Facebook page prove exactly that.



Discrimination that promotes negative or harmful stereotypes involves exaggerating traits or characteristics of a particular group that are implied as being endemic to that group. The very power and harm of a stereotype is in its ability to become so pervasive that it is accepted as truth: the stereotype of the clueless but sexualised bimbo is well known, and continues to be propagated despite its harmful effects on the way men see women (particularly women who look a certain way) and the way women see themselves. The fact that discrimination laws on the basis of harmful stereotypes exist is evidence enough that these kinds of stereotypes are harmful and offensive.

The 'sexual bimbo' stereotype is one of the most powerful, ubiquitous and harmful in the representation of women in the media (especially given the alarming levels of violence by men against women, both online and in real life); yet – perversely – it is also one of the most widely accepted stereotypes that continue to persist. Indeed, this stereotype is so widely considered as 'passable' that even some women would argue or agree that it is OK to depict these women in this light, because 'women like this get what they deserve' in terms of how they are depicted or 'it's just a joke'. It is hard to come up with another stereotype so widely promoted in advertising and other media that is so obviously harmful to the way that society regard women, so clearly discriminatory, and yet is still meant to be taken as 'just a joke'. As evidence of this, you need only replace the women in this ad with 'bimbo' men: suddenly, again, the joke is lost. The joke is the stereotype; and the stereotype is these women. By extension, then, these women are the joke.

Discrimination in the Code is aligned with discrimination laws, which are designed to protect groups from being negatively portrayed based on their race or sex (amongst other things). Despite these laws, negative stereotypes about the 'dumb bimbo' persist and have been used in this ad as the basis for the joke of the ad. This is evidenced by the fact that, were these women replaced with a group of men, the joke is no longer funny. It is deemed funny that women like this have no idea about cars, how to save themselves, and it is regarded as particularly hilarious when they fall into the clutches of a man who intends to take advantage of them. Why is that funny? Because part of the stereotype is the widely accepted notion that these women are asking for it.

Given the context of women's inequality as well as the issue of violence against women in our community, it is impossible to argue that the portrayal of the women in this ad as stereotypical bimbos does not amount to discrimination, particularly when coupled with Sheen's role as the man with a dubious reputation who has no moral qualms in taking advantage of them. The examples provided on your website as potentially amounting to discrimination or vilification determined by the Panel where they depict unfair or less favourable treatment of gender; and/or humiliate or invite contempt or ridicule of gender, include ads that depict family members creating a mess while a woman has sole responsibility for cleaning it up; or that feature a man trying and failing to undertake simple parental or household tasks. Whilst mildly offensive, these stereotypes are far less damaging than the one used in the UltraTune ad, which, when placed in the context of our unequal society where sexual violence



against women is rife, makes fun not only of the stereotype (evidently it is funny to see this 'type' of woman land in distress and try to get themselves out of it) but of the sexual inequality between this 'type' of woman as represented in the ad, and lecherous men who – according to the innuendo in the ad – have every right to take advantage of them.

Given the stereotypical portrayal of these women in this ad as being completely incapable of:

- driving their car
- knowing how to fix their car; and
- caring whether or not they are going to be 'picked up' by Charlie Sheen, as well as the women being portrayed as nothing more than 'rubbergirlz' for Charlie Sheen's pleasure; and given the examples provided on your website that are far more innocuous than the Ultratune ad's depiction of the 'dumb bimbo who can't drive a car but is still useful for sexual objectification' stereotype, can the Panel please provide their reasons as to how this ad does NOT amount to presenting women in a stereotypical way that amounts to discrimination?

It is concerning that there is a small section of the community who feel that the portrayal of these women in this ad is not a representation of 'all women' but just a 'certain type' of woman, and that this is therefore not discriminatory to all women. According to this view, some might argue that this portrayal is not discriminatory because the perception is that it is an accurate and deserving depiction of them – and in particular one that this 'type' of woman would not find offensive. According to this standard, this 'type' of 'bimbo' actually exists and the standard accepts that women who look or behave in this way really can't manage a car, care only about their looks, and like or deserve to be with men like Charlie Sheen. Is this, then, the standard that you have applied in this instance?

If the Panel is going to disallow complaints against ads such as these – particularly in the current context of an epidemic of violence against women in our community – the Panel needs to be very clear about how ads like these fit within the Ad Code and specifically address the issues of prevailing community standards, context of the ad, and discrimination against women in your response.

I would also like to know how many of the Panel met to review my complaint and who was on the Panel when my complaint was reviewed. I look forward to receiving your response.

There are four separate Television advertisements associated with this case. Two of the advertisements are of 19.30 seconds duration, one of 19.15 seconds and one of 19.60 seconds. Each advertisement contains a different combination of visuals and dialogue. It is unclear which advertisements were seen by the original complainants or the appellant. The Panel's determination, in its 'description of the advertisement' only refers to an advertisement of undetermined length and to 'longer versions', without any further identification of which advertisements it was referring to in its determination. The Case Report indicates that in the 'longer versions' the four girls are seen in the boat's cabin with Charlie Sheen and Warwick Capper. This scene



actually appears in one of the 19.30 second ads and the 19.60 second ad. This review addresses all four advertisements for the sake of completeness given the differing content in the advertisements.

There were 97 complaints regarding the advertisements noted above. This is a high number of complaints in relation to an advertisement. The Case Report quotes a sample from only 7 of the 97 complaints received by Ad Standards. Previous advertisements by the same advertiser, many in the same advertisement series “Unexpected situations”, have also attracted a relatively high number of complaints. Following the acceptance of the review application, an invitation was sent to parties to make a further submission to the Independent Reviewer. The Advertiser submitted a letter which was out of time and which stated that the Advertiser relied on the submission made in its response to the original complaints which is reproduced in the case report above. Fifteen of the original complainants also made submissions which strongly supported the application for review, forcefully reiterated points that they had made in their original complaints and were universally critical of the Panel’s determination.

As the appellant states the review grounds in terms of a failure by the Panel to properly consider prevailing community standards regarding violence against women and the representation of women as sexual objects in the media and in terms of a failure by the Panel to properly consider stereotyping and the discriminatory representation of women as sexual objects in advertising, it is important to fully appreciate the social and cultural context within which the self-regulatory Code of Ethics operates. The Practice Note also has its genesis in this context.

The AANA Code of Ethics, states under “Objectives” that:
“Its object is to ensure that advertisements and other forms of marketing communication are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors”. (emphasis added).

Under “Definitions” the Code states:
“Prevailing Community Standards means the community standards determined by the Ad Standards Community Panel as those prevailing at the relevant time in relation to Advertising or Marketing Communication. Prevailing Community Standards apply to clauses 2.1-2.6 below”. (emphasis added)

The above statements make clear that the Community Panel must actively consider what the prevailing community standards are at the time of the advertisement appearing and that this active consideration applies to each of the clauses of Section 2 --Consumer Complaints.

These comments in the Code document are reinforced by the Practice Note which



states:

“Section 2 of the Code provides the self-regulatory rules around portrayal of people, violence, treatment of sex, sexuality and nudity, appropriate language and Prevailing Community Standards in advertising or marketing communication”. (emphasis added)
“Prevailing Community Standards apply to all parts of Section 2. This means that the Ad Standards Community Panel will have regard to community standards at the time the advertising or marketing communication was published. Prevailing Community Standards are determined primarily by the Community Panel ... on a case by case basis, as part of the complaints process. (all emphasis added)

“To assist advertisers and complainants, this Practice Note provides some guidance into Prevailing Community Standards. (emphasis added) It is influenced in part by previous decisions of the Community Panel, the AANA’s intent in developing this Code and any relevant research of the AANA or Ad Standards. There is no one test of Prevailing Community Standards. (emphasis added) The Prevailing Community Standard will differ in relation to health and safety, nudity, language, violence and portrayal of people.

The above statements make clear, that when considering complaints that there is a breach of one or more sections of the Code, it is the duty of the Community Panel to actively consider community standards, in relation to the particular issue each section covers, on a case by case basis, at the time that the advertising or marketing was published. In other words, the specific components of the individual advertisement must be carefully considered against those standards at the time they were published. Furthermore, the emphasis on individual consideration of each advertisement is reinforced by the comment that there is no one test of Prevailing Community Standards. The Practice Note provides ‘some guidance’ but is clearly not meant to be definitive of Community Standards. The Community Panel must address itself as best it can to what the prevailing community standards are in relation to each individual advertisement, at the time the advertisement/marketing was published. This obligation forms a significant benchmark in this review.

APPELLANT’S GROUNDS

1. Failure to properly consider prevailing community standards around violence against women and the representation of women as sexual objects in the media.

The appellant contends that the Community Panel, in determining that the Advertisements did not breach the Code of Ethics, has failed to properly and adequately consider prevailing community standards in relation to the Code. The detailed submission of the appellant is set out in full above, but the following points are the salient ones made by the appellant:

1. Community context: the ad is situated in the current context of extreme violence against women in our community.



The appellant notes that Australia has been experiencing an ‘epidemic’ of violence against women and that at the time the advertisements were being shown on the Nine network in Melbourne, that city experienced the rape and murder of a young Arab-Israeli student while walking to her home at night. (This murder was discovered early on the morning of January 16, 2019.) The appellant notes the devastating effect this murder had on the community. The appellant also cites the suicide of a woman in NSW after her former husband killed himself and their two children in 2018. The appellant notes that the Nine Network continued to show the above advertisements containing Charlie Sheen, a ‘known abuser of women’ ‘winning’ (his trademark saying) over women being portrayed in a stereotypically ‘dumb bimbo’ manner including their inability to steer their car. The appellant takes exception to the choice of Charlie Sheen for whom the women are ‘easy wins’ and who has ‘an obvious desire to take advantage of them sexually’ on board his boat. It is the appellant’s view that the choice of actor and the scenario in the advertisement create implicit messages in the advertisement that deliberately fly in the face of prevailing community standards regarding acceptable behaviour towards women.

2. The advertisements were shown in prime-time television, during the Australian Open tennis tournament while children were watching, which, given the messages of the portrayal of women in the advertisements, represents a further breach of community standards.

3. Prevailing Community Standards about women have changed: innuendo is just as damaging as explicit images. Whilst it may once have been considered acceptable to denigrate and objectify women in this way and to use male celebrities with a history of violence against women in order to do it, the prevailing community standard no longer views this as acceptable. The advertiser uses innuendo and implications in the ad to objectify the women as sex objects (although the licence plate that reads ‘RubberGirlz’ [sic] leaves little to the imagination as to how these women are meant to be perceived) and also uses innuendo around Charlie Sheen’s reputation as a ‘winner’ of women who cares only for how he can exploit them (clearly implied in the ad). The visuals are deliberately not explicit; yet the message is absolutely clear.

4. Choosing Charlie Sheen to deliberately upset prevailing community standards around objectification of and violence against women. Sheen’s image in the ad seeks to build on his reputation as a ‘winner’ who capitalises on his position to take advantage of ‘dumb bimbos’ who are so stupid or helpless as to drive their car directly into the water once the brakes have failed, and who are represented as nothing more than sexual objects who are there for Sheen’s pleasure (evidenced by their portrayal; by Charlie Sheen’s predatory behaviour and his intention to take advantage of them despite the fact he should be helping; and by their number plate which reads “RubberGirlz” which implies they are nothing more than sex toys). Given Ultra Tune’s previous choices in their advertising, including Mike Tyson, it is clear Ultra Tune have



chosen Charlie Sheen to deliberately upset the prevailing community standards around how women deserve to be depicted in the media. Comments on Ultra Tune's Facebook page posted in response to the ad are evidence of this fact. Facebook comments show that the target audience for the ad are well aware that the ad has been designed to generate controversy, and that the ad is deliberately designed to create division between the target audience (mostly men) who support the depiction of women in the ad, and people like me (mostly women) who are offended by it. Ultra Tune has deliberately selected Sheen because of his notoriety with both the target audience and the many women who are offended by him being placed in this context in this ad. (A long list of Sheen's history of alleged and proven violence against women from 1990 to 2017 is attached by the appellant).

5. Given the context of violence against women in Australia, and in Melbourne in particular at the time the ad was being shown to women, men and minors during day and night tennis games how does Ultra Tune ad fit within prevailing community standards in relation to:

- Standards of representing the issue of violence against women, and in particular when promoting men in ads who have a known record of violence against women as ultimate 'winners'?
- Standards of representing women as dumb bimbos who are incapable of driving or fixing a car and who, despite having just been thrown into the water in a car accident, are unquestioningly available for sex or at the very least for some 'fun' with Charlie Sheen? (Clearly implied by his actions and comments in the ad).

Allowing community standards to be defined by the target audience of this ad demeans women and belittles the impact ads like these have in contributing to the culture of disrespect towards and violence against women. It is now quite simply not acceptable to the community -and particularly to women-to celebrate men who are known to abuse women in advertising and to situate them in a context whereby they are lauded as winners over women- irrespective of whether their violent histories are referred to in the ad or not.

2. Section 2.1 Discrimination: unfair or less favourable treatment and gender stereotypes. Failure to consider properly the discriminatory representation of women as sexual objects in advertising, the sexual innuendo in the ad around taking advantage of the women's situation and underlying messages in the ad around women who have a certain look being 'ripe for the picking'.

Salient points under this section made by the Appellant are:

1. Irrespective of whether or not the women are depicted as victims of their situation Sheen certainly intends to take advantage of them and the implication is that these women are ripe for the picking. Sheen is not a rescuer, but a wolf in sheep's clothing; he fully intends to capitalise on his dumb luck and shares this joke with the audience; the women and the situation they find themselves in are the joke,



not Sheen, who is the ultimate winner.

2. In addition to going against prevailing community standards, the ad clearly presents the women in a stereotypical way that amounts to discrimination on the basis of gender. It uses the harmful stereotype of the 'dumb bimbo' who knows nothing about driving, cars ... and represents these women and their characteristics in a way that, in the context of ads about cars and driving, men are rarely -if ever- represented. It also presents the stereotype of these women as not deserving of Sheen's (or the audience's) respect: indeed, we as the audience are invited to ridicule them just as Sheen does; we are expected to judge them based on their looks (just as Sheen does) and to decide that they 'deserve what they get' simply because of the way they look and behave. Comments on Ultra Tune's Facebook page prove exactly that.

Discrimination that promotes negative or harmful stereotypes involves exaggerating traits or characteristics of a particular group that are implied as being endemic to that group. The power and harm of a stereotype is in its ability to become so pervasive that it is accepted as truth. The stereotype of the clueless but sexualised bimbo is well known and continues to be propagated despite its harmful effects on the way men see women (particularly women who look a certain way) and the way women see themselves. The fact that discrimination laws on the basis of harmful stereotypes exist is evidence that these kinds of stereotypes are harmful and offensive.

The 'sexual bimbo' stereotype is one of the most powerful, ubiquitous and harmful in the representation of women in the media (especially given the alarming levels of violence by men against women, both online and in real life); yet-perversely- it is also one of the most widely accepted stereotypes that continue to persist.

Discrimination in the Code is aligned with discrimination laws, which are designed to protect groups from being negatively portrayed based on their race, sex or other characteristics. Despite these laws, negative stereotypes about the 'dumb bimbo' persist and have been used in this ad as the basis for the joke of the ad. Given the context of women's inequality as well as the issue of violence against women in our community, it is impossible to argue that the portrayal of the women in this ad as stereotypical bimbos does not amount to discrimination, particularly when coupled with Sheen's role as the man with a dubious reputation who has no moral qualms in taking advantage of them.

The examples provided on the Ad Standards website as potentially amounting to discrimination or vilification where they depict unfair or less favourable treatment of gender and /or humiliate or invite contempt or ridicule of gender ...whilst mildly offensive, are far less damaging than the one used in the Ultra Tune ad, when placed in the context of our unequal society where sexual violence against women is rife.

Given the stereotypical portrayal of the women in this ad as being completely



incapable of:

- Driving their car
- Knowing how to fix their car; and
- Caring whether or not they are going to be 'picked up' by Sheen as well as the women being portrayed as nothing more than 'RubberGirlz' for Charlie Sheen's pleasure; and given the examples on the Ad Standards website that are far more innocuous than the Ultra Tune depiction of the 'dumb bimbo who can't drive a car but is still useful for a sexual objectification stereotype, why would this ad NOT amount to presenting women in a stereotypical way that amounts to discrimination?

If the Panel is going to disallow complaints against ads like these -particularly in the current context of an epidemic of violence against women in our community – the Panel needs to be very clear about how ads like these fit within the Ad Code and specifically address the issues of prevailing community standards, context of the ad and discrimination against women.

Reviewer's Recommendation

The four advertisements which are the subject of this review, as noted above, attracted the very high number of 97 complaints. Nowhere in the Determination of the Panel is this high figure mentioned, nor is there any discussion which appears to relate to individual complaints other than the 7 nominated as samples of the complaints received in the Case Report. Thus, the focus of the Panel in making its Determination is narrowed at the outset and appears to concentrate on the content of those 7 complaints.

The 97 complaints received, apart from indicating a very strong negative reaction from the public, cover a wide area of community concerns, the many elements of which are not comprehensively caught by the 7 examples given. This is a significant factor considering the obligation of the Panel to consider all complaints under Section 2 of the Code in the context of prevailing community standards. It is unclear to the Reviewer whether or not the Panel actually carefully read the 97 complaints in full, though the Reviewer has been advised that the Panel received a document containing all 97 complaints. It is understandable that a sample of what might be considered 'representative' complaints may be chosen for inclusion in the Case Report, for the sake of brevity, but it is incumbent upon the Panel, even when onerous, to consider all complaints made about an advertisement (in this case one with four versions). As there is no mention of any of the complaints other than the 7 included in the Case Report, it is unknown whether the Panel fulfilled its obligation to carefully consider all complaints. If so, it should state that all 97 complaints were considered.

The Reviewer has carefully read all 97 complaints for this Review. Those complaints raise a multitude of issues of community concern and standards related to the four versions of the advertisement. Of the 97 complaints:

- 79 complainants viewed the advertisements during the Australian Open Tennis Tournament and one during the Cricket Broadcast in January 2019. Other complainants were more vague about the time of their viewing the advertisements.



- 28 complained that children/young people were viewing when the advertisements were shown
- 35 complained that the advertisements breached prevailing community standards or offended against the social climate
- 6 complained of the advertisement in relation to the #Me Too movement
- 37 complained of the use of Charlie Sheen citing his history of domestic violence and his negative reputation
- 8 specifically complained of the advertisements in the context of the Melbourne murder of January 16, 2019
- 10 complained of sexualised portrayals of women unrelated to the product/service being advertised
- 30 complained of sexual objectification
- 23 complained of sexualisation of the women in the advertisement
- 9 complained of sexual stereotyping
- 45 complained that the advertisements were sexist
- 15 complained that the advertisements were degrading or demeaning to women
- 11 complained of the use of the term 'rubbagirlz' on the numberplate in the advertisement, citing its implication of sex toys
- 1 complained of a breach of section 2.6 regarding health and safety

The Panel summarised complainants' concerns about the advertisement(s) as follows:

"...that the advertisement features the actor Charlie Sheen, ...portrays women as unintelligent, ...depicts the women as sexual objects, is overly sexualised for a child audience and that the advertisement features driving practices which are unsafe".

As will be clear from the above elaboration of the content of the 97 complaints, this summary vastly oversimplifies the content and detail of those complaints and appears to only relate to the 'sample' of 7 complaints.

The Panel first considered complaints about the featuring of Charlie Sheen in the four versions of the advertisement.

The complaints which mention Charlie Sheen vary in their emphases and concerns. Many are clearly concerned with his history in the context of community attitudes to violence against women, the objectification of women and the #Me Too movement, and/or are offended by his behaviour in the specific advertisement in question. Complainants raise issues of the interaction of Sheen's history and reputation with the way he is portrayed in the advertisements. Some complaints take particular exception to the use of Sheen, given his history of domestic violence, at the time of the murder in Melbourne of an Arab-Israeli student on her way home at night. This murder was discovered early on the morning of January 16 which was in the middle of the first week of the Australian Open Tennis broadcast, the origin of 79 of the 97 complaints. These issues raised by complainants are squarely issues regarding



prevailing community standards and yet the Panel does not mention prevailing community standards once in its analysis of the use of Charlie Sheen in the advertisement.

Having noted the complainants' concerns around the use of Charlie Sheen in the advertisement, without any further analysis of the content of the complaints regarding Sheen and without any consideration of the prevailing community standards related to the complaints, especially the context of domestic violence and the Melbourne murder, the objectification of women and the #Me Too movement, the Panel simply restates a statement from an earlier determination (0026/18):

"...advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code, unless the depiction of the person in the advertisement is in some way depicting a breach of the Code".

This statement, which is without further authority for the proposition it states, claims too broad a licence given the over-arching framework for Section 2 complaints to always be considered in the context of prevailing community standards at the time the advertisement was published. This was particularly important given the advertisements were broadcast at a time of heightened community concern about violence and related matters, especially following the murder in Melbourne on January 16. Significantly, the Panel does not properly then examine whether the depiction of Charlie Sheen in the advertisement does in fact 'in some way depict a breach of the Code', relying instead as detailed below, on the fact that the advertisement did not refer to or condone his prior behaviour. In general, one can imagine a wide range of individuals whose use in advertisements may be unacceptable given prevailing community standards at the time of the advertisement.

The complaints were not simply about the fact that Charlie Sheen was used in the advertisement. They were largely also about what he is doing in the advertisement and what is implied by the advertisement. Most were about the interplay between his history of violence against women and his behaviour in the advertisement in the context of his negative reputation. Complainants repeatedly cited the combination of Sheen's reputation/history with his behaviour in the advertisements in the context of prevailing community attitudes. These aspects were not addressed at all by the Panel in considering complaints about the use of Sheen in the advertisements. Rather, the Panel (citing 0026/18), dismisses these concerns on the basis that:

"...his history was not mentioned in the advertisement and that not all viewers would be aware of who he was. The Panel considered that the advertisement did not reference or condone his prior behaviour and that his depiction in the advertisement was not a depiction that breached the Code."

This is rather a disingenuous statement given the infamy and notoriety of Charlie Sheen, his high media profile, the fact the he is at present starring in a network TV



program and the deliberate choice by Ultra Tune of Sheen as the pivot of the advertisement, surrounded by references both verbal (“winning”) and visual (boat is called ‘winning’) to his reputation which are reinforced by his dialogue and facial expressions to camera and his interaction with the women. Regardless, the lack of overt reference to a history of notoriety and the absence of an overt condoning of prior behaviour, are not sufficient to preclude a consideration of the elements complained of above against relevant prevailing community standards at the time the advertisement was published when deciding whether or not the manner of use of Charlie Sheen in this advertisement breached the Code.

The Panel cites two cases, relating to the use of celebrities with varying degrees of notoriety, in advertisements by this and another advertiser. The Reviewer notes that one of the two cases (0234/17) relates to Section 2.6 of the Code, which is the section relating to community standards on health and safety. This case related to drug use by the celebrity and turned on the significance of references to drug use and was the subject of an independent review which confirmed the Board’s determination. The case did not turn on the issue of the use of a celebrity and its facts are irrelevant to this case. The second case, featuring Mike Tyson, is cited above (0026/18) in this Review and its relevant elements addressed there. Neither case precludes an obligation by the Panel to consider complaints regarding the manner of use of Charlie Sheen and any possible breach of the Code within the context of prevailing community standards at the time the advertisement was published.

Section 2.1

The Panel then turned to a consideration of whether the advertisement complied with Section 2.1 of the Code which states:

“Advertising or Marketing Communications shall not portray people 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 states that it “noted the complainants’ concerns that the advertisement portrayed women as stupid and needing to be rescued by men”.

This is far too simplistic and trivial a rendering of the detailed content of so many numerous complaints relating to the issue of the portrayal of the women in the advertisements. The complaints, which include gender stereotyping, vilification of women, objectification of women, negative portrayal of women and ridicule of women among other issues are varied and detailed and deserve a more considered analysis than that offered by the Panel.

Pursuing its consideration of Section 2.1, the Panel refers to the Practice Note to Section 2.1 which states inter alia:

“This section describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. The types of behaviour are:

- Discrimination – unfair or less favourable treatment



- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule ‘

The Practice Note also addresses the use of humour in advertisements as follows: “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.

Gender Stereotypes are also addressed by the Practice Note as follows:

“Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. As such, advertisements may feature people undertaking gender-stereotypical roles, e.g. a woman cleaning a house or a man doing DIY, or displaying gender stereotypical characteristics e.g. a man being assertive or a woman being sensitive to others’ needs, but they should take care to avoid suggesting that stereotypical roles or characteristics are:

- Always associated with that gender;
- The only options available to that gender; or
- Never carries out or displayed by another gender

as this may amount to discrimination on the basis of gender.

“Portrayals may amount to discrimination or vilification as determined by the Community Panel where they depict unfair or less favourable treatment of gender; and/or humiliate or invite contempt or ridicule of gender.”

“...Portraying a person as attractive does not, in and of itself, constitute discrimination or vilification.”

The Panel cites two cases which it considers similar to the present case but which had different outcomes:

In one case, the Board considered that “the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did breach Section 2.1 of the Code”. This was case 0020/16, in which the Board (as it was then) upheld complaints following a recommendation from the Independent Reviewer that the case be reconsidered. The advertisement, also one of the “Unexpected Situations” series by Ultra Tune, involved two young women driving a car which breaks down at a railway crossing. Despite the intent of the advertisement being said by the Board to show an unrealistic situation, the Board considered the behaviour of the women made them appear unintelligent and presented them in a ‘stereotypical helpless female situation’. The Board took the view that the depiction of the women’s reaction to their situation was a negative depiction of women and did amount to vilification of women.

The second case (0154/17) was another in the same series for Ultra Tune and



featured two women whose car muffler falls off and the car catches fire. The women contact Ultra Tune before they put out the fire. The women were considered to be aware of their situation and although their 'handling of the fire extinguishers was not ideal', the Board took the view that the women were depicted "as being aware and in control" and that therefore there was 'no suggestion that they were stupid or helpless with regards to their predicament'. The Board noted that this situation could happen to anyone and that the depiction of the women, 'who then take control of the situation' did not discriminate against or vilify a person or section of the community on account of gender.

Regarding the current case, the Panel states that the women 'are shown to have an accident after the brakes fail on their car'.

This is rather an understatement, as the women in fact find themselves in a life-threatening situation when their car plunges nose first into deep water when they are strapped into the car seatbelts. After their brakes fail, they are seen continuing at apparently much the same speed, along a totally flat road which inexplicably becomes a wharf, waving their hands in the air at passers-by and screaming loudly and hysterically for help. There is nothing in this section of the advertisement which indicates the women are in control and rather, the behaviour of the women might be interpreted as reflecting the phrase used in case 0020/16 (cited by the Panel), indicating a 'stereotypical helpless female situation'. The majority Panel does not adequately address this aspect of the advertisement.

It might be noted here that the advertisement appears to have been filmed at two different locations which are then melded as though they are one. The first part of the advertisement shows the women driving normally down a dual lane road with single centre marking in a semi-rural environment, far from any urban or built up marine area with shallow water and a rocky shoreline on one side of the road. The latter part of the advertisement, after the brakes fail, shows the car continuing, with the driver pumping the brakes and ultimately driving past a workman with a stop sign and into bags of tree debris which mysteriously appear. When the car emerges from the bags of debris, it is on a wharf which is much closer to an urban setting and located in a marine infrastructure environment. One boat is sitting in the water reasonably close to the wharf. The women, from the time they realise the brakes have failed, are waving their hands in the air (one hand for the driver) and screaming hysterically for help from passers-by. The period the car is travelling varies with each particular advertisement.

As noted earlier, there are four versions of this advertisement which differ in length. The Minority of the Panel took the view that in the longer version(s) 'the women's actions between realising the brakes have failed and when they drive off the pier did show the women to be helpless and in need of rescuing. They considered that the women 'shown going relatively slowly, waving their arms in the air and screaming was



not a depiction of women who were in control'. (This echoes the finding in 0020/16 (cited by the Panel) and 0175/16 (the related case based on modifications of the same advertisement.)

However, the Panel majority considered that the behaviour of the women after the brakes fail was 'not a suggestion that the women were stupid or unable to drive, rather that they have had an accident as a result of circumstances outside of their control'. The majority considered that in contrast to 0020/16, the four women were 'seen to take control of the situation as they climb aboard a boat and find a phone to contact Ultra Tune for help'. The Panel considered that 'advertisers are able to use unrealistic or exaggerated situations to promote their service and that in this instance, the depiction of the women was not demeaning or subjecting women to ridicule'. The majority Panel's comment that the women 'take control of the situation as they climb aboard a boat and find a phone to contact Ultra Tune for help' seems to be an implicit acknowledgement that the women are not in control up to that point. It is also difficult to know what assistance an Ultra Tune serviceman could render in the case of a submerged car in a harbour though nothing turns on this point.

The Panel does not explain why the use of an unrealistic or exaggerated situation is relevant to their conclusion here.

The majority of the Panel further considered that 'the women are not depicted in a manner that is unfair nor in a manner that would be likely to humiliate or incite ridicule of women. The majority determined that 'the current advertisement does not discriminate against or vilify a person or section of the community on account of gender' and thus 'the advertisement did not breach Section 2.1 of the Code.'

The majority of the Panel does not properly address, with adequate reasoning, the issue of gender stereotyping in the context of prevailing community standards at the time the advertisement was published in its majority view here. Nor does it properly address, in a reasoned manner, whether the portrayal of the women invites contempt or ridicule amounting to discrimination or vilification in the context of prevailing community standards at the time the advertisement was published.

Among factors raised by complainants which might be considered regarding the issues of gender stereotyping and the incitement of contempt or ridicule are:

- The fact that once the brakes on their car fail the women scream hysterically for help, wave their arms in the air and in the longest version appear to have no understanding of how to bring the car to a safe halt on a flat road with little or no traffic.
- Whether this behaviour represents a stereotypical helpless female situation
- Whether it is likely that males would be depicted reacting in the same way to a brake failure
- Whether the advertisement suggests women do not get their car serviced



- The depiction of the car: pink with large eyelashes applied around the headlights and the number plate “rubbagirlz” attached, suggesting sex toys.
 - The clothing (wet or dry) of the women. Described by the Advertiser as ‘normal casual daywear’ and by the Panel as “beach attire”. The high heels worn by the driver would seem to suggest that the women are not in beach attire.
 - Dialogue and innuendo in the advertisement including facial expressions and comments to camera
 - The physical appearance of the three provocatively posed bikini-clad women already on Sheen’s boat before the four women board it
- This does not represent a definitive list of factors which might be considered by the Panel.

Crucially, the Panel also fails to consider that a depiction which breaches 2.1 does not have to be a depiction which lasts for the entire duration of the advertisement in question. It is the overall impression of the advertisement that is definitive of whether there is a breach of the Code. The Panel majority rely on their claim that ‘the women are seen to take control of their situation as they climb aboard a boat and find a phone to contact Ultra Tune for help’. This can be compared with the scenario in 0175/16 where the Board found that the final scene of the advertisement (where the women walk away confidently from a train wreck in which their car is destroyed) did: “not detract from the overall impression the advertisement gives, which is that women are being presented in a manner which incites ridicule on account of their gender”.

As previously noted, in Case 0020/16 the Board (as it was then) upheld complaints following a recommendation from the Independent Reviewer that the case be reconsidered. In case 0175/16 the Independent Reviewer confirmed the Board’s decision to uphold complaints.

In the present case, the single action of the women in phoning Ultra Tune is not definitive of whether the advertisement breaches Section 2.1. It is the cumulative, overall impression of the advertisement which is relevant. Each advertisement will stand on its own facts as to the overall impression created.

It is also important to note, as has been stated in previous cases, that when deciding whether an advertisement has breached the Code, it is not the intention of those who made the advertisement which is relevant but the received execution of the advertisement.

In relation to the Panel’s consideration of Section 2.1 of the Code, I find that there were flaws in the process by which the determination was made in that the Panel has not properly considered all elements arising under the section nor given adequate reasons for conclusions it arrived at under this Section. In addition, I find there was a flaw in the process by which the determination was made in that the determination



does not indicate that the Panel considered all of the issues raised by the complainants. Thus, ground three of the grounds for appeal is satisfied.

Section 2.2

The Panel then turned its attention to a consideration of Section 2.2 of the Code which states:

“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 also noted the Practice Note on Exploitative or Degrading Material which defines the two terms as:

Exploitative

- a. Taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities or
- b. Focusing on their body parts where this bears no direct relevance to the product or service being advertised.

Degrading

Lowering in character or quality a person or group of persons.

It is important to note that the definition of Exploitative has two distinct legs which are not mutually exclusive.

Section 2.2, like 2.1 must be considered by the Panel in the context of the prevailing community standards at the time the advertisement was published.

The Panel ‘noted the complainant’s concern that the advertisement depicts women as highly sexualised which is unrelated to the product and therefore exploitative’.

This comment, which seems to relate to only one complaint, again vastly oversimplifies the content of the numerous complaints which related to this section of the Code. These complaints were varied and detailed and covered both legs of the definition of Exploitative. At least 30 complaints related to objectification of the women in the advertisement, 23 to sexualisation of the women and at least 10 related to focusing on the women’s bodies where it bears no relation to the service being advertised (ie Ultra Tune vehicle services).

Firstly, the Panel considered the threshold question of whether the advertisement contained sexual appeal, a term for which there is no definition in either the Code or the Practice Note. The Panel fails to actually directly answer their own question, but as the Panel continues past the threshold, it can only be assumed that the answer was that the advertisement did contain sexual appeal. This would be an unremarkable finding, given the appearance/clothing of the women in the advertisement including the three bikini-clad women who are already on board the boat before the four wet



women board. 23 complainants complained on the basis of sexualisation of the women.

The Panel notes that the women are 'attractive'. Again, this is an unremarkable finding and it is unhelpful to an analysis of whether Section '2.2 is breached by the advertisement. There is no contention as to whether the women are attractive or not. The Panel considered the clothing of the women to be beach attire' and not 'overly sexualised' but fail to elaborate further on this last point, which appears to be an implicit acknowledgement that the clothing was at least somewhat sexualised. The contention that the clothing is beach attire has been addressed above in this Review. The Advertiser maintains that the clothing is 'normal casual day wear' and not beach attire. Given the driver is wearing high heels, it is difficult to see why the Panel assumed the clothing was beach attire, unless it reflects an implicit rationale for the fact that the clothes are all very revealing of the physical attributes of the four women, even before they are wet. The Panel does not mention at all the three skimpy bikini-clad women who are already on board the boat and who are draped or posed around the boat in a manner to emphasise their physical attributes.

The Panel states that 'there is[sic] no close-ups or lingering on the women's bodies'. It is unclear which leg of the definition of Exploitative this statement is intended to relate to but as the Panel takes up the second leg subsequently, it can be assumed they are here referring to the first leg. Certainly, it is not an accurate description of the beginning of the advertisement, when the women are driving in the car, as the visuals of the tops of their bodies are in close-up and throughout the advertisement their breasts are obvious and their tops very revealing, whether wet or dry. The Panel fails to make any comment about the revealing nature of the women's clothing apart from its unsupported view that it was 'consistent with beach attire' and that it was not 'overly sexualised'.

On the issue of innuendo, the Panel considered that the lolly pop/boat comment, Charlie Sheen's comments about not having towels and that he is 'winning' when the women climb onto the boat represented 'mild innuendo' and did not amount to taking advantage of the sexual appeal of the women. 13 of the 97 complaints received commented on the innuendo and 30 complained of objectification in this advertisement but the Panel does not address the content of those complaints. The Panel mentions three examples of innuendo only. It is silent on the boat being named "winning", the "rubbagirlz" numberplate of the car (complained of by 11 complainants) and other insignia of objectification mentioned by complainants including the actions and dialogue of Sheen.

A minority of the Panel considered that:

"the actions of Charlie Sheen towards the women could be considered creepy and that he does treat the women as sexual objects".

Although there is no further elaboration of the Minority view, it seems clear that on



the basis of this one sentence, the Minority considered that the first leg of the definition of exploitative was satisfied and that therefore the advertisement had breached Section 2.2. The expression 'creepy' might be better expressed in more conventional professional language in a Panel determination.

The majority then states:

“However, if these depictions did amount to using sexual appeal in the advertisement, the majority Panel considered that the women were not depicted as objects or commodities rather that they are depicted as a group of women who have an accident and call Ultra Tune for assistance once they are able to do so, and is therefore not a breach of part (a) of the definition of exploitative.”

There is, of course, no question of a breach of the Practice Note. Breaches can only occur in relation to the Code. The majority clearly considered that part (a) of the definition of exploitative was not satisfied. However, the Panel gives no cogent reasoning at all for this conclusion. The comments about having an accident and calling Ultra Tune are total non-sequiturs and are unrelated to the elements contained in part (a) of the definition of exploitative. There is no question that the women have an accident, nor is there any dispute that they phone Ultra Tune when they can. These uncontested facts have nothing to do with the way the women are depicted in the advertisement nor with whether the women are objectified in the advertisement. Given that 30 complainants complained of objectification in the advertisement and that the Minority Panel considered there was sexual objectification, it was incumbent upon the Majority to offer a properly reasoned analysis of their finding that there was no objectification. Their analysis should be in the context of prevailing community standards at the time of publication of the advertisement.

Moving to the second leg of the Practice Note definition of exploitative, the Panel (presumably unanimously as not stated otherwise) considered that:

“the women’s bodies are not the focus of the advertisement and that there is no particular focus on the women’s body parts in the advertisement and that this is not a breach of part (b) of the definition of exploitative”.

Again, as there can be no breach of the Practice Note, the Panel has indicated that it does not think this element of the advertisement satisfies part (b) of the definition of exploitative.

However, yet again, the Panel fail to articulate their reasons for this view at all, and in particular, they do not say what they think the focus of the ad is, if not the bodies of the women. It was again incumbent upon the Panel to elaborate on their statement above, especially given that 23 complainants complained of the sexualisation of the women in the advertisement and 10 complained of the sexualised depiction of the women not being related to the product or service being advertised. The Panel must address this issue within the context of prevailing community standards at the time the advertisement was published.



The Panel summarises regarding the issue of employing sexual appeal in a manner exploitative to any individual or group of people:

“The Panel considered that the advertisement did not present the women in an exploitative manner.”

Given the Minority view above, this is assumed to be a majority decision.

The Panel comments that it acknowledged that ‘some members of the community would find the use of female models to promote an automotive service to be exploitative however the Panel considered that this use of women is not itself a breach of the Code.

There is no disagreement about this statement as there is no Code provision which precludes female models, or any other women, being used in advertisements promoting automotive services. The fact that they are models is totally irrelevant. It is the manner in which the persons featured are depicted which is relevant to a breach of the Code and which is the concern of this Review.

The Panel then considered whether the advertisement employed sexual appeal in a manner which is ‘degrading’ to any individual or group of people. As indicated previously, the Practice Note defines degrading as “lowering in character or quality a person or group of people”.

Although this is a somewhat difficult definition, it is challenging to understand the direct relevance of what the Panel says in this part of its determination. It states:

“The Panel considered that the women are not seen to react favourably towards Charlie Sheen, and that can be seen when one of the women takes the phone off him. The majority of the Panel considered that Charlie Sheen’s behaviour in the advertisement may make people think less of him, but it does not lower in character or quality the women in the advertisement and is not a degrading depiction of the women.”

There is no comment at all as to what the Minority Panel view was or the reasons for it to differ from the majority view. Many elements may satisfy this part of Section 2.2 of the Code, among which are sexualisation, objectification and the use of sexual stereotypes. These are not elements which are only relevant to the definition of exploitative. The Code specifically refers to the use of sexual appeal in a manner which is degrading of any individual or group of people. That focus is on the way the sexual appeal of the women is depicted in the advertisement, not on Sheen’s behaviour, although elements of that might also be degrading to the women. By concentrating on Sheen’s behaviour in considering this part of Section 2.2 the Panel



have missed the point of what the section is about. It may well be that the Minority view had the correct focus, but as it is not provided, there is no way of knowing if that was the case. 15 complainants complained specifically of this part of 2.2, citing, inter alia, sexual stereotyping, dehumanisation of women, objectification, misogyny and sexism.

The Panel continued as follows:

“the women in the advertisement were depicted as being in an unfortunate situation, however the Panel considered that this was a humorous depiction rather than degrading and that the overall manner in which the women are depicted in the advertisement does not degrade or lower the quality of the women in the advertisement or women in general”.

Given that the Minority had disagreed with the Majority that Sheen’s behaviour did not degrade the women, it is assumed the above statement is a Majority statement. The Panel gives no elaboration at all on its reasons for viewing this as a humorous depiction – reasons which may or may not be convincing. Regardless, the use of humour (successful or otherwise) is not necessarily a defence to a breach of the Code. It is the overall impression of an advertisement in cumulative terms which is definitive of whether it breaches the Code, not the use of humour. Consideration of this element must be within the context of prevailing community standards at the time the advertisement was published.

Concluding its consideration of Section 2.2 the Panel states:

“The Panel considered that the advertisement did not employ sexual appeal in a manner which is exploitative or degrading to any individual or group of people and did not breach Section 2.2 of the Code.”

In relation to the Panel’s consideration of Section 2.2, I find that there were flaws in the process by which the determination was made in that the Panel has not properly considered all elements arising under Section 2.2 nor articulated adequate reasons for conclusions it arrived at under this Section. Additionally, I find that there was a flaw in the process by which the determination was made as the determination does not indicate that the Panel considered all of the issues raised by the complainants. Accordingly, ground three of the grounds for appeal is satisfied.

Section 2.4

Next the Panel considered Section 2.4 of the Code which states:

“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.”

The Panel notes complainants’ concerns that the advertisement depicts women in a sexualised manner and that it was not appropriate for family viewing.

In dealing with these complaints, the Panel first relies on the CAD “W” rating and



‘considered that the advertisement would therefore not be placed in content that is directed at to children’.

The CAD ‘W’ rating states:

General/Warning “W”

Definition: General/ Care in placement

May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children.

The advertiser is ultimately responsible for placement decisions for its advertising. There is no doubt that in placing these advertisements during the televising of the Australian Open Tennis Tournament during the relevant fortnight in January 2019, the advertiser was aware that children and minors all over Australia would be viewing. The same was true of the advertisements shown during the cricket broadcasts. These are iconic Australian sports telecasts – the highlights of the sporting year for those sports. In addition, it was school holiday time and the tennis and cricket were broadcast throughout the day and into the nights. It would be disingenuous to accept that the advertiser was not aware of the composition of the audience for these programs, but it allowed these four advertisements to be shown in a saturation pattern throughout the periods noted above. Of the 97 complaints received, 80 nominated having seen the advertisements during the tennis and or cricket. 28 complaints specifically complained of having children viewing when the advertisements were shown.

The Panel dismisses the issue of ‘relevant audience’ too easily by relying on the “W” classification and by not examining further the deliberate decision to place these advertisements in broadcasts to a broad audience which contained children and minors. The “W” rating states ‘care in placement’ in relation to child viewers for a reason. The warning is included precisely because the material contains elements which may not be suitable for children. These programs were not ‘principally directed to children’ but they were definitely known to include children in their audience.

The Practice Note states that:

‘Relevant audience is informed by the content of the advertising or marketing communication as well as other material that may be provided by the advertiser including classification material, audience measurement data and the media placement plan, to determine the audience that the advertiser intends to see the advertising...’

And

“The Community Panel will have regard to the audience ... composition data for the relevant media where this is provided.”



It appears the Panel was not provided with any data at all by the advertiser, but the absence of such material does not in any way negate the fact that the advertiser would have known that large numbers of Australian children, especially as it was school holidays, would form a considerable part of the audience for the tennis and cricket broadcasts. Having this knowledge, the advertiser must logically have intended that the children, as well as adults, would see the advertising.

Given this fact and the large number of complaints having their genesis in the tennis/cricket broadcasts, the Panel should not have dismissed this issue by simply relying on the “W” CAD rating given the content of the advertisements. The Panel’s consideration of ‘relevant audience’ should also be informed by prevailing community standards at the time the advertisement was published.

The Panel continued its consideration of 2.4 as follows:

“The Panel noted that in the current advertisements the women are dressed as though they are going to the beach and that there is no nudity or sex in the advertisement. The Panel considered that the women are depicted as being in wet clothing, but that is a result of having driven into the water and the depiction is not sexualised in how they are shown. The Panel considered that while some comments in the advertisement may be considered to have sexual innuendo, these are mild, and the overall impression of the advertisement is humorous and not sexualised and would not be inappropriate to the relevant broad audience.

In the Panel’s view the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience and the Panel determined that the advertisement did not breach Section 2.4 of the Code.”

This Review has noted above the difference between the advertiser’s view and the Panel’s view of the nature of the clothing of the four women featured in the advertisement. The issue of why the clothes are wet is immaterial. The revealing nature of the clothes has been mentioned above and has not been addressed by the Panel in its determination. There is no mention of the three skimpy bikini clad women who are already aboard Sheen’s boat. For the same reasons as are stated above in this Review, the Panel needed to give more careful consideration to the issue of the sexualisation of the women given their portrayal in the advertisement. 23 complainants cited sexualisation as the reason for their complaint. As noted above, humour, successful or not, is not of itself necessarily a defence to a breach of the Code if other elements indicate a breach. The element of innuendo goes wider than some ‘comments’ in the advertisement as has been addressed above in this Review and those wider elements should have been considered by the Panel in the context of prevailing community standards at the time the advertisement was published.

In relation to the Panel’s consideration of Section 2.4, I find there was a flaw in the process by which the determination was made in that the Panel did not properly



consider all elements arising from that Section. I also find that there was a flaw in the process by which the determination was made as the determination does not indicate that the Panel considered all of the issue raised by complainants. Ground three of the grounds for appeal is thus satisfied.

On the subject of what the Panel calls ‘the relevant broad audience’, given the comments above regarding the considerable portion of the viewing audience who would have been children during the showing of these advertisements, in both the tennis and cricket broadcasts, it is perhaps instructive to consider what the Practice Note says about advertisements in public places, as there are clear parallels and the driving principle is the same.

The relevant passage reads:

“For the purposes of advertisements in public places, the Community Panel will not only take account of the relevant audience, but it can also take a broad view of the ‘audience’. This recognises the broad nature of the audience for advertisements in public places, which may include Minors. The Community Panel will not just have regard to whom the advertisement is targeted (the relevant audience) but the Community Panel also looks at who can see it and the Community Panel will take that into consideration in determining their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience” (Reviewer’s emphasis)

Given the parallel situation existing during the Australian Open Tennis Tournament and the Cricket, it might be usefully argued that this same broad view of the audience might be taken in the present case, when considering what was the relevant audience for these advertisements during the January sporting broadcasts.

Section 2.6

Finally, the Panel considers Section 2.6 of the Code which states:

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Panel refers to complainants’ complaints, in the plural, regarding this section of the Code. There was only one complaint among the 97 relating to Section 2.6, complaining that the driver wearing high heels and a passenger wearing her seat belt below her shoulder constituted a breach of Section 2.6.

The Panel correctly comments that in Australia there are no laws detailing what footwear is appropriate for driving, but that drivers would be required to be in control of their vehicle. The Panel considered the driver was shown to be in control of the vehicle prior to the failure of the brakes and this is an accurate description of the visuals in the advertisement. Driving in high heels, whether advisable or not, is a fact of Australian life. The Panel was entitled to find that Section 2.6 is not breached on this account.



The Panel considered the issue of the passenger seatbelt, which is strapped slightly below her shoulder. The Panel noted that the car is a convertible with the seatbelt originating further back than it does in a conventional car and concluded that the seatbelt was not being worn inappropriately or in a manner which would be against prevailing community standards or legislation on seatbelt safety. Accordingly, the Panel determined that the advertisement did not depict material contrary to prevailing community standards on health and safety. The Panel was entitled to find that the advertisement did not breach Section 2.6 of the Code.

Conclusion

As noted above, there were a number of substantial flaws in the process by which the Community Panel's determination was made, satisfying ground three of the grounds for appeal.

I recommend that the Community Panel reconsider its determination taking into account the matters raised in this Review.

THE DETERMINATION ON REVIEW

The Ad Standards Community Panel (the Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

In particular, the Panel noted that the Independent Reviewer considered that there was a substantial flaw in Panel's determination and the matter should be reconsidered by the Panel. Specifically, the Reviewer noted:

- That it was not evident in the Panel's previous determination that all complaints had been given due consideration
- That it was not clear in the Panel's previous determination which of the four versions of the advertisement the Panel was referring to in determinations
- That there was a substantial flaw in the decision making process of the Panel when considering Sections 2.1, 2.2 and 2.4 of the Code, particularly in relation to the above and the lack of consideration of what constitutes current community standards in relation to these issues.

Taking into account the Independent Reviewer's recommendations and comments, the Panel first outlined the complaints received about the advertisement to be reconsidered.

- Complainants were concerned that the placement of the advertisement was inappropriate, particularly the placement during the tennis when many young children would be watching.
- Complainants were concerned that the advertisement was inconsistent with



prevailing community standards and the current social climate, particularly in relation to the #me too movement and the murder of Aiaa Maasarwe on January 16, 2019.

- Complainants were concerned about the use of Charlie Sheen in the advertisement particularly in relation to his history of violence and his negative reputation for his treatment of women.
- Complainants were concerned about the advertisement being sexist and using sexual and negative stereotypes of women.
- Complainants were concerned about the sexual objectification of the women in the advertisement, particularly in relation to the sexualised portrayal of women for an unrelated product.
- Complainants were concerned that advertisements were degrading of, and demeaning to, women.
- Complainants were concerned that the use of the licence plate 'rubbagirlz' was referring to the women as sex toys.

Taking into account the Independent Reviewer's recommendations and comments, the Panel outlined the four versions of the advertisement to consider separately.

The 60 second version of the advertisement depicts four women in a pink convertible car. One of the women says, "hey check out those boats" and a second woman responds "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". 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 first 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. She yells 'there's no brakes' 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 four women in the car scream and the passengers wave their arms in the air. The car goes off the end of the 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.

In the second 30 second version of the advertisement a woman driving a car attempts to brake and realises that the brakes aren't working. She yells, "there's no brakes". The pink car with the licence plate 'rubbagirlz' continues onto a pier while the four women in the car scream and the passengers wave their arms in the air. The car goes off the end of the pier and ends up in the water. Charlie Sheen is seen to be watching from a boat and 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 looks at the camera and says, "winning". The woman who was driving asks if he has 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 in the boat's cabin. Charlie Sheen asks, "ready skipper?" and Warwick Capper wearing a captain's hat says, "ready Charlie". A man from Ultra Tune is then seen standing by his car on the road asking "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 15 second version of the advertisement depicts four women in a pink convertible car. One of the women says, "hey check out those boats" and a second woman responds, "they're so big" before putting a lollypop into her mouth. 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. 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. The car goes off the end of the pier and ends up in the water. The voice over states, "avoid unexpected situations, get your car serviced at Ultra Tune". Charlie Sheen is seen on a boat reacting to the women going overboard. The text 'To be continued...' is shown on the screen.



The Panel acknowledged the Independent Reviewer's comment that the Panel had not properly considered all elements arising under Section 2.1 of the Code nor given adequate reasons for the conclusions reached, in particular the Panel failed to give adequate consideration to the issue of gender stereotyping, prevailing community standards and that the cumulative impression of the advertisement has to be considered, not a single scene.

The Panel first reconsidered the 60 second version of the advertisement under Section 2.1 of the Code.

The Panel acknowledged concern in the community over the timing of the advertisement being insensitive given the recent murder of student Aiiia Maasarwe, however noted that events such as this are outside of the control of the advertiser and that the advertiser could not have known about this unfortunate event when producing and placing the advertisement

The Panel acknowledged the concern of community members around the placement of the advertisement in the tennis, when there has been a lot of work to promote the equality of female tennis players, however noted that the placement of the advertisement is not a consideration under Section 2.1 of the Code

The Panel acknowledged that community standards in this area have changed recently, particularly in relation to #metoo movement.

The Panel considered whether the advertisement discriminated against or vilified the women in the advertisement according the current community standards.

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 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 Cappa 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 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 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 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 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 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 and did breach Section 2.1 of the Code.

The Panel then reconsidered the first 30 second version of the advertisement under Section 2.1 of the Code. 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.

The Panel determined that the first 30 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 and did breach Section 2.1 of the Code.

The Panel then reconsidered the second 30 second version of the advertisement



under Section 2.1 of the Code. The Panel considered 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 still 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.

The Panel considered that this version of the advertisement includes more scenes with Charlie Sheen shown as having power over the women than the first 30 second version. The Panel also noted that this version of the advertisement included the scene from inside the cabin with the three additional women in bikinis. The Panel considered that this version of the advertisement depicted the additional three women as being just there for decoration or as objects for the sexual pleasure of men.

The Panel determined that the second 30 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 and did breach Section 2.1 of the Code.

The Panel then reconsidered the 15 second version of the advertisement under Section 2.1 of the Code. The Panel noted that this version of the advertisement does not include any boat scenes and only includes the scene of the woman going off the jetty. The Panel considered that the advertisement includes some elements of gender stereotypes especially in relation to negative stereotypes around driving, however, does not have the same cumulative discriminatory effects as the other advertisements. The Panel considered that there is no power imbalance shown and the women are not depicted as being saved by men and therefore there is not a strong suggestion that the women's crash was related to their gender. The Panel determined that the 15 second version of the advertisement did not depict material in a way which discriminates against or vilifies a section of the community on account of gender and did not breach Section 2.1 of the Code.

Upon reconsideration, finding that the advertisements did depict material in a way which discriminates against or vilifies a section of the community on account of



gender, the Panel determined the 60 second and two 30 second versions of advertisement did breach Section 2.1 of the Code.

The Panel acknowledged the Independent Reviewer's comment that the Panel had not properly considered all elements arising under Section 2.2 of the Code, nor given adequate reasons for the conclusions reached. In particular, the Panel noted the Reviewer's comments that the Panel failed to give adequate consideration to prevailing community standards and the attire of the women, and that the Panel failed to adequately address the issue of objectification of the women and give sufficient comment as to why the advertisement did not breach this section of the Code.

The Panel then reconsidered the 60 second version of the advertisement under Section 2.2 of the Code.

The Panel noted the complainants' concerns about the sexual objectification of the women in the advertisement, particularly in relation to the sexualised portrayal of women for an unrelated product.

The Panel acknowledged the complainants' concerns that the use of the licence plate 'rubbagirlz' was referring to the women as sex toys. As referenced above, 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 first considered whether 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 acknowledged the complainants' concerns about the use of Charlie Sheen in the advertisement particularly in relation to his history of violence and his negative reputation for his treatment of women.

The Panel considered that the advertisement uses Charlie Sheen's reputation of being a predatory person, and while the use of the actor in itself does not constitute a breach of any section of the Code, the broad community's understanding 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 use of



Charlie Sheen offers an implied endorsement of this behaviour and the objectification of women and is likely to be against the prevailing community standards relating to the depiction of women in an exploitative manner.

Similar to the reasoning outlined in the consideration of Section 2.1, the Panel considered that 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.

The Panel considered that the three women dressed in bikinis were depicted as decoration and had no voice or power. The Panel acknowledge that the appearance of the women was brief, lasting for less than a second, however considered that the depiction of these 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 Panel considered that the advertisement was exploitative in that it does take advantage of the sexual appeal of the women by depicting them as objects or commodities.

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 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.

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 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.

The Panel determined that the 60 second version of the advertisement did employ sexual appeal in a manner which was exploitative of the women in the advertisement.

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

The Panel then reconsidered the second 30 second version of the advertisement under Section 2.2 of the Code. The Panel noted that this version of the advertisement does not feature Charlie Sheen's comments about being out of towels, however, does include the use of the phrase winning in reference to four distressed women climbing onto his boat. The Panel considered that this comment is predatory and likely to be against the prevailing community standards relating to the depiction of women in an exploitative manner.

The Panel noted that this version of the advertisement includes the scene inside the cabin and considered that the three additional women are depicted as just being there as decoration. The Panel acknowledge that the appearance of the women was



brief, lasting for less than a second, however considered that the depiction of these 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 as sexual objects for Charlie Sheen to take advantage of.

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

The Panel then reconsidered the 15 second version of the advertisement under Section 2.2 of the Code. The Panel noted that in this version of the advertisement Charlie Sheen is only shown at the end and does not speak. The Panel considered that this version of the advertisement does not capitalise on Charlie Sheen's negative reputation and does not show him acting in a predatory manner or depict him as exploiting women. Therefore, the Panel determined that in this version of the advertisement the use of Charlie Sheen would not be a depiction contrary to Section 2.2 of the Code.

A minority of the Panel considered that one of the women's comments about the boats being big before putting a lollypop in her mouth was a depiction which does contain sexual appeal. The minority of the Panel considered that as this sexual innuendo was the only context of the woman's character this was a depiction of her as a sexual object which was exploitative.

The majority of the Panel considered that the comment made by the woman was in reference to the boats and while her sucking on a lollypop may be considered to be mild sexual innuendo, this was not a depiction which was suggesting that she was a sexual object or available for sex. The majority of the Panel considered that the depiction of the women in this version of the advertisement did contain sexual appeal, but that the women were not shown to be objects or commodities, there was no focus on their body parts and the women were not lowered in character or quality.

The Panel determined that the 15 second version of the advertisement did not employ sexual appeal in a manner which is exploitative or degrading of the women in the advertisement.

Upon reconsideration, finding that the advertisements did employ sexual appeal in a manner which was exploitative of the women in the advertisement, the Panel determined the 60 second and two 30 second versions of advertisement did breach Section 2.2 of the Code.

The Panel acknowledged the Independent Reviewer's comment that the Panel had not properly considered all elements arising under Section 2.4 of the Code nor given adequate reasons for the conclusions reached, in particular the Panel failed to give



adequate consideration to the placement of the advertisement, the revealing nature of the women's clothing and prevailing community standards.

The Panel then reconsidered the 60 second version of the advertisement under Section 2.4 of the Code.

The Panel noted the complainants' concerns that the placement of the advertisement was inappropriate, particularly the placement during the tennis when many young children would be watching and that the women were portrayed in a sexualised manner and were depicted in revealing clothing.

The Panel noted that the relevant audience for the advertisement is people watching the tennis or cricket and considered that while the audience would be mostly adults, many children would also be watching and the relevant audience for this advertisement would therefore be broad.

The Panel acknowledged complainants' concerns that the messaging in the advertisement around the objectification of women and gender stereotypes were not appropriate for a young impressionable audience, however considered that the relevant audience of the advertisement can only be considered under Section 2.4 of the Code in relation to the depiction of sex, sexuality and nudity in the advertisement.

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 determined that the 60 second version of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then reconsidered the first 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. Consistent with the reasonings for the determination for the 60 second advertisement, the Panel found that the first 30 second version of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then reconsidered the second 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 noted that the three additional women in the advertisement were depicted wearing revealing bikinis, however considered that the depiction of these women was brief, not the focus of the advertisement and related to the boat setting. The Panel considered that the sexual innuendo in the advertisement, including Charlie Sheen's comment about winning, was mild and would not be understood by a younger audience. Consistent with the reasonings for the determination for the 60 second advertisement, the Panel found that the second 30 second version of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then reconsidered the 15 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 one woman's comments about the boats being big, was mild and would not be understood by a younger audience. Consistent with the reasonings for the determination for the 60 second advertisement, the Panel found that the 15 second version of the advertisement did treat the issue of sex, sexuality and nudity



with sensitivity to the relevant broad audience.

Upon reconsideration the Panel, finding that the advertisements did treat sex, sexuality and nudity with sensitivity to the relevant audience, determined that all versions of advertisement did not breach Section 2.4 of the Code.

The Panel noted that the Independent Reviewer had confirmed the original findings of the Panel under Section 2.6 of the Code. In addition to the issues previously considered under this section of the Code, the Panel considered whether the depiction of the speed of the vehicle in the advertisement would be likely to breach Section 2.6 of the Code.

The Panel considered that the vehicle in all four 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 all four versions of the advertisement did not breach Section 2.6 of the Code.

Upon reconsideration, the Panel determined that the 60 second and two 30 second versions of advertisement did breach Sections 2.1 and 2.2 of the Code and upheld the complaints.

ADVERTISER'S RESPONSE TO IR DETERMINATION

Whilst disappointed in the Panel decision, we will be modifying the advertisement.

