

<b>COMPLAINT NUMBER</b>	19/178
<b>COMPLAINANT</b>	D Morris
<b>ADVERTISER</b>	Kai Point Coal
<b>ADVERTISEMENT</b>	Kai Point Coal, Print
<b>DATE OF MEETING</b>	13 August 2019
<b>OUTCOME</b>	Upheld Advertisement not to be used again in current form

### **Description of Advertisement**

The print advertisement for Kai Point Coal appeared in the Star community newspaper in Dunedin and included an advertorial about what Zero Carbon means to the average family. It highlighted the costs of moving towards the carbon free date of 2050 and questioned some of the consequences. The opinion piece was set above an advertisement in a more traditional format with details of the coal products available from the Advertiser.

### **Summary of the Complaint**

The Complainant is concerned about environmental claims made in the advertisement which imply global warming is not a significant concern and the statement that more deaths occur in winter due to the cold without mentioning the dangers of extreme heat. The Complainant was also concerned about claims that increasing atmospheric carbon dioxide concentration is beneficial for plants and flora and that likened the earth's climate conditions when the dinosaurs existed to those beneficial for humans.

### **Issues Raised**

- Truthful Presentation
- Environmental Claims

### **Summary of the Advertiser's Response**

The Advertiser said it wanted to start a discussion about what Zero Carbon might mean for those in the local area. The Advertiser provided some substantiation for questions around some of the current thinking on climate change and said it was written as an opinion piece.

### **Summary of the Complaints Board Decision**

The majority of the Complaints Board upheld a Complaint about Kai Point Coal for making environment claims about climate change which had not been sufficiently substantiated. The majority of the Board said the advertorial section of the advertisement had the potential to mislead or confuse consumers and had not been prepared with a due sense of social responsibility.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following code

### ADVERTISING STANDARDS CODE

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(b): Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(h): Environmental Claims:** Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 14/399 regarding the same Advertiser which was Upheld by the Complaints Board.

The full versions of this decision can be found on the ASA website

<https://www.asa.co.nz/decisions/>

**Decision 14/399** concerned a newspaper advertisement from Kai Point Coal which was headed “Coal is pretty green.” The majority of Complaints Board was of the view that the humour intended was directly at odds with green principles and relied on consumer’s understanding that the advertorial was ironic. The Board said the advertisement had the potential to mislead consumers and that equating coal with trees as a viable heating alternative to wood to promote coal was socially irresponsible.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertorial part of the advertisement is that using coal as a heat source is cheap and the measures needed to obtain the Carbon Zero goal are expensive and unnecessary.

The Complaints Board noted that second part of the advertisement shows the price-point of the coal and how it is an inexpensive, available heating option. The Board said the two parts of the advertisement gave context to the identity and position of the Advertiser.

The Board did not consider the advertorial piece had been written with irony and said some consumers may be deceived or confused by the statements made in the advertisement dismissing climate change.

#### *Is the advertisement making environmental claims which require substantiation?*

The majority of the Complaints Board said the overall consumer takeout of the statements amounted to an environmental claim that global warming was not a significant issue and there were benefits to be gained from it. Therefore, the Board said the Advertiser needed to substantiate such a claim.

The majority of the Complaints Board said that as part of its intent to sell a product, the Advertiser had made overall claims of an environmental nature without providing sufficiently robust substantiation. The Board said the substantiation provided by the Advertiser was effectively opinion pieces rather than actual scientific studies.

A minority of the Complaints Board disagreed and said the Advertiser was predominantly asking questions rather than stating facts and used 'I' statements to voice an opinion. The minority said that while the substantiation provided by the Advertiser was limited, it was sufficient to support the opinion statements. The minority said the advertisement did not reach the threshold to breach Principle 2 or Rules 2(b) or 2(h) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board ruled taking into account context, medium, audience and product, the advertisement was in breach of Principle 2 and Rules 2(b) and 2(h) of the Advertising Standards Code.

### **Outcome**

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again in its current form.

### **APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
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### Appendix 1

#### COMPLAINT FROM D MORRIS

My concerns with the environmental claims made in the advertisement are:

1. The implication that global warming is not a significant concern ("Is it that bad, we have had a great summer and no snow lately?"). Current scientific consensus is that a rise in average global temperatures of 2 degrees Celsius will result in significant impacts upon both humans and ecosystems, as well as an increase in the number of extreme weather events [1].
2. The statement that increasing atmospheric carbon dioxide concentration is beneficial for plants and flora ("I understand that the world is greening because plants just love CO<sub>2</sub>... so the greening part is no surprise."). It is true that there has been a greening of Earth's vegetated land over the last few decades, and that an increase in atmospheric CO<sub>2</sub> may have contributed to this [2]. However it remains unclear whether this will continue, and increasing global temperatures partly caused by the greenhouse effect from atmospheric CO<sub>2</sub> will likely lead to a decrease in plant life, as well as other species [1].
3. The attempt to liken the Earth's climate conditions when the dinosaurs existed to those beneficial for humans ("Go back a few years, quite a few years, when the dinosaurs roamed - the planet was about 10 degrees warmer than today. Warm is good, cold is bad."). Firstly it is unclear where 10 degrees came from. While it was certainly warmer then, the actual value generally ranges from 2 to 8 degrees, with warmer and colder periods [3]. Secondly, overall conditions were significantly different then, including significantly higher atmospheric oxygen concentrations, and are not a good indication that warming of this degree is good for any present-day life on Earth.
4. The advertisement also indicates that more deaths occur in winter due to the cold. I am not disputing this, but would like to point out that the advertisement omits mention of the dangers posed by extreme heat, which are a likely outcome of increasing global warming [1]. Recent heatwaves in the Northern hemisphere have demonstrated the dangers of heat extremes, but the advertisement chose not to mention this risk, despite the strong links between coal burning and increasing atmospheric CO<sub>2</sub> concentration, leading to increased warming [1,4].

[1] M. Allen, P. Antwi-Agyei, F. Aragon-Durand, M. Babiker, P. Bertoldi, M. Bind, S. Brown, M. Buckeridge, I. Camilloni, A. Cartwright *et al.*, Technical summary: Global warming of 1.5° c. an IPCC special report on the impacts of global warming of 1.5° c above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty," 2019.

[2] Zhu, Z., Piao, S., Myneni, R., Huang, M., Zeng, Z., Canadell, J., Ciais, P. *et al.*, (2016). Greening of the Earth and its drivers. *Nature climate change*, 6(8), p.791.

[3] M. Scott and R. Lindsey, "What's the hottest Earth's ever been? | NOAA Climate.gov", *Climate.gov*, 2019.

[Online]. Available: <https://www.climate.gov/news-features/climate-qa/whats-hottest-earths-ever-been>.

[Accessed: 28- Jun- 2019].

[4] J. Rogelj, D. Shindell, K. Jiang, S. Fi ta, P. Forster, V. Ginzburg, Handa, H. Kheshgi, S. Kobayashi, E. Kriegler *et al.*, Mitigation pathways compatible with 1.5° c in the context of sustainable development," 2018.

## Appendix 2 RESPONSE FROM ADVERTISER, KAI POINT COAL

The article which I wrote for the Star in May19 was essentially heightening awareness amongst those people who heat their homes with wood and coal, in the local area, about what the Zero carbon may mean in their lives and start a discussion. I did not intend to offend anyone.

The information I used for this article has not been referenced as the article was produced in a couple of hours from what I know and my humble opinion.

In response to the CONCERNS:

### **A ("Is it that bad, we have had a great summer and no snow lately?").**

In my opinion some warming in Dunedin would be great. More BBQ's etc. in the context of the article I am not referring to the whole globe.

However Luning et al show the Medieval Climate Anomaly was in many parts of the world (1) and was warm too. **Dr. Don J. Easterbrook** (2)

There are a number of sources that question extreme weather events have got worse Judith A. Curry (2a). She recently testified at COMMITTEE ON OVERSIGHT AND REFORMS SUBCOMMITTEE ON ENVIRONMENT OF THE UNITED STATES HOUSE OF REPRESENTATIVES

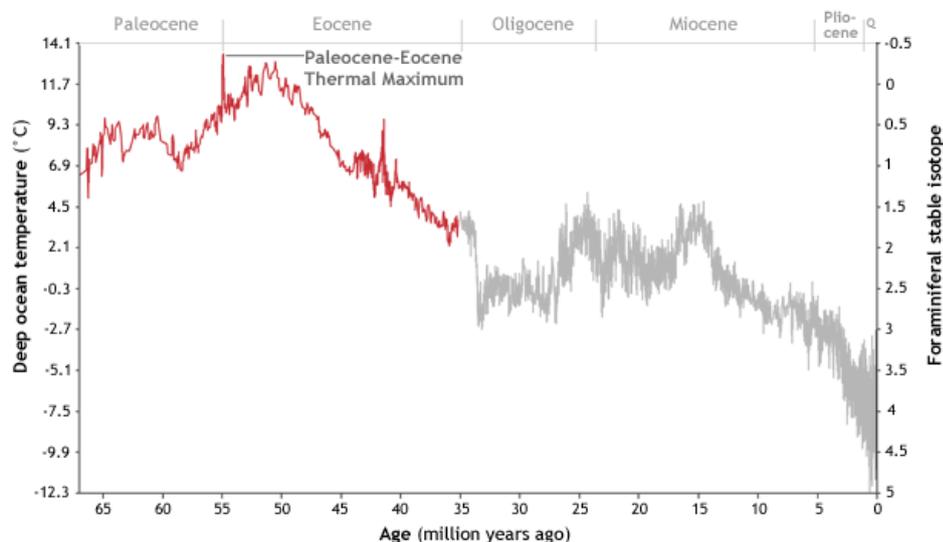
### **B ("I understand that the world is greening because plants just love CO<sub>2</sub>... so the greening part is no surprise.").**

Apparently winkler et al think so too. (3)

### **C ("Go back a few years, quite a few years, when the dinosaurs roamed - the planet was about 10 degrees warmer than today. Warm is good, cold is bad.").**

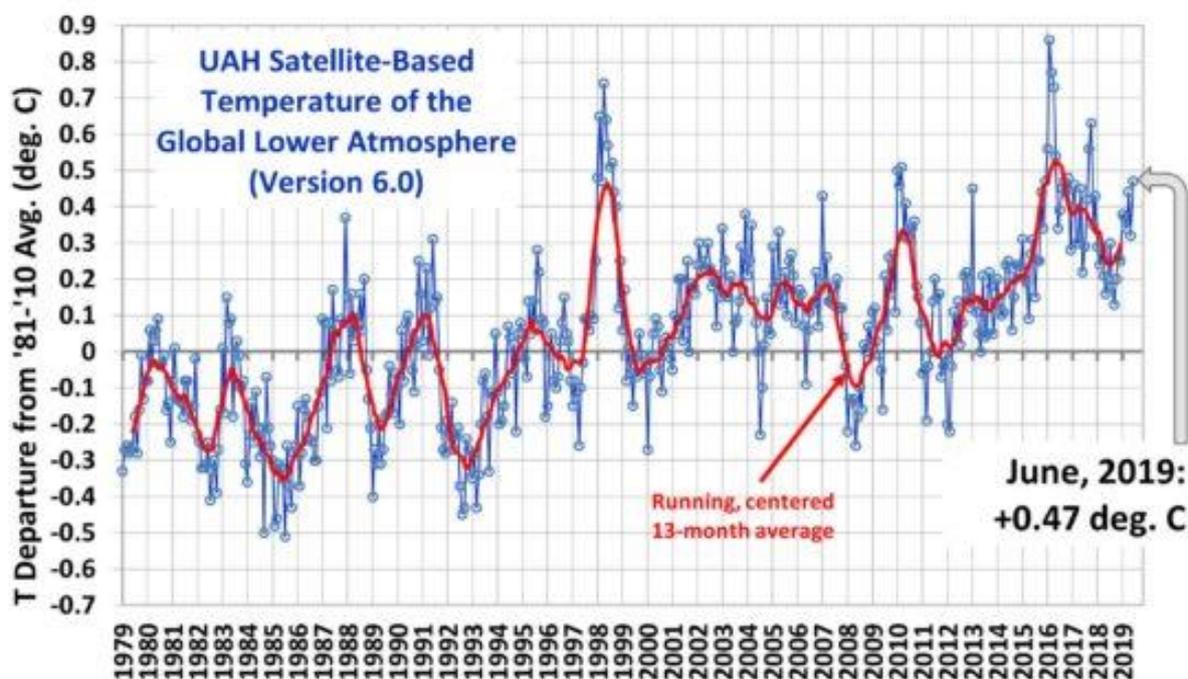
The reason I mention dinosaurs, is that is when the coal that Kai Coal extracts, was formed there were dinosaurs about. We find evidence of them in the form of gastroliths (polished gizzard stones) as the natural acids in the coal measures appear to attack the bones etc and no other evidence is found of them. At that stage plant growth appears to be rampant. We are currently mining a 15m coal seam which indicates about 15 mil years continual plant growth at that time.

Interesting it looks like we have been cooling ever since.



NOAA National Climatic Data (4)

D And is it really warming that much? The hot spikes are related to El Nino years.



### Latest Global Average Tropospheric Temperatures (5)

And is the CO2 causing all the warming?

“The IPCC does not have a convincing explanation for:

- warming from 1910-1940
- cooling from 1940-1975
- hiatus from 1998 to present” (6)

### References

1 Sebastian Lüning, Mariusz Gałka, Fritz Vahrenholt, **Warming and Cooling: The Medieval Climate Anomaly in Africa and Arabia**, *Paleoceanography and Paleoclimatology* 2017

2. <https://wattsupwiththat.com/2010/12/28/2010-where-does-it-fit-in-the-warmest-year-list/>

2a. <https://curryja.files.wordpress.com/2019/06/testimony-oversight-and-reform-2019-v2.pdf>

<https://judithcurry.com/2019/06/25/hearing-on-climate-change-and-natural-disasters-today/>

3.

AU - Winkler, Alexander J.

AU - Myneni, Ranga B.

AU - Alexandrov, Georgii A.

AU - Brovkin, Victor

PY - 2019

DA - 2019/02/21

TI - Earth system models underestimate carbon fixation by plants in the high latitudes

JO - Nature Communications

Most Earth system models agree that land will continue to store carbon due to the physiological effects of rising CO<sub>2</sub> concentration and climatic changes favoring plant growth in temperature-limited regions. But they largely disagree on the amount of carbon uptake. The historical CO<sub>2</sub> increase has resulted in enhanced photosynthetic carbon fixation (Gross Primary Production, GPP), as can be evidenced from atmospheric CO<sub>2</sub> concentration and satellite leaf area index measurements. Here, we use leaf area sensitivity to ambient CO<sub>2</sub> from the past 36 years of satellite measurements to obtain an Emergent Constraint (EC) estimate of GPP enhancement in the northern high latitudes at two-times the pre-industrial CO<sub>2</sub> concentration ( $3.4 \pm 0.2 \text{ Pg C yr}^{-1}$ ). We derive three independent comparable estimates from CO<sub>2</sub> measurements and atmospheric inversions. Our EC estimate is 60% larger than the conventionally used multi-model average (44% higher at the global scale). This suggests that most models largely underestimate photosynthetic carbon fixation and therefore likely overestimate future atmospheric CO<sub>2</sub> abundance and ensuing climate change, though not proportionately.

4 <https://www.climate.gov/news-features/climate-qa/whats-hottest-earths-ever-been>

5 <https://www.drroyspencer.com/latest-global-temperatures/>

6 <https://judithcurry.com/2014/08/24/the-50-50-argument/>

A basic, neutral description of the advertisement	Editorial in a home heating display
Date advertisement began	23 may19
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	The Star comes out weekly as a community rag
Is the advertisement still accessible – where and until when?	Not that I can find
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	
Who is the product / brand target audience?	Homes that are facing fuel poverty. Coal purchased at the mine costs 3.3c per kw/hr.
Clear substantiation on claims that are challenged by the complainant.	See attached