

Friends of the Earth Grievance against RSPO members who are also members of the MPOC Board of Trustees

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1. Details and background on complainant

Full legal name :	Friends of the Earth International Friends of the Earth Netherlands/ Vereniging Milieudefensie
Acronym :	FoEI/MD
Nationality:	Dutch
Legal status:	FoEI: Association according to Dutch Law (“Vereniging”) MD: Association according to Dutch Law (“Vereniging”)
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Friends of the Earth International is the world’s largest grassroots environmental network, uniting 69 diverse national member groups and some 5,000 local activist groups on every continent. With approximately 2 million members and supporters around the world, we campaign on today’s most urgent social and environmental issues. We challenge the current model of economic and corporate globalization, and promote solutions that will help to create environmentally sustainable and socially just societies.

Our vision is of a peaceful and sustainable world based on societies living in harmony with nature. We envision a society of interdependent people living in dignity, wholeness and fulfilment in which equity and human and peoples' rights are realized. This will be a society built upon peoples' sovereignty and participation. It will be founded on social, economic, gender and environmental justice and free from all forms of domination and exploitation, such as neoliberalism, corporate globalization, neo-colonialism and militarism.

We believe that our children's future will be better because of what we do.

2. Name of RSPO Member grievance made against

The grievance is made against the Malaysian Palm Oil Association (MPOA), who is a co-founder and member of RSPO as well as an institutional representative in the Board of Trustees (BoT) of the Malaysian Palm Oil Council (MPOC). The grievance furthermore extends to RSPO members whose CEOs or Board Members are also represented in the MPOC Board of Trustees. These are: IOI, Tabung Haji Plantations, FELDA, Sime Darby and United Plantations.¹

MPOC directors/ officers Board of Trustees members	Member representing	Function in Board of Trustees	Other functions
Yusof Bin Basiron (Basiran)	Ministry of Plantation Industries and Commodities	Chief Executive Officer	<ul style="list-style-type: none"> • Independent non-executive chairman to the board and shareholder in TH Plantations (member of RSPO) • Director of TH Ladang (Sabah & Sarawak) (part of the THP Group) • Board member of Felda Holdings (member of RSPO) and two of its subsidiaries.
Lee Yeow Chor	Malaysian Palm Oil Association (MPOA)	Chairman of the Board of Trustees (since 2009)	<ul style="list-style-type: none"> • Executive Director of IOI Corporation (member of RSPO)
Sabri Bin Ahmad	Malaysian Palm Oil Association (MPOA)	Technical and Promotions Committee, Regional Market Committee (Africa)	<ul style="list-style-type: none"> • Former Chairman of the Board of Sime Darby/Golden Hope Plantations (member of RSPO)
Ramli Putih	Federal Land Development Authority (FELDA)	Technical and Promotions Committee (Middle East)	<ul style="list-style-type: none"> • Manager of FELDA Holdings (member of RSPO)
Carl Bek Nielsen	Malaysian Palm Oil Association (MPOA)	Technical and Promotions Committee, Regional Market Committee (Europe)	<ul style="list-style-type: none"> • Vice Chairman, Non-Independent Executive Director of United Plantations (member of RSPO)

¹ List based on 2007 MPOC Annual Report (see Annex 1), the MPOC SSM abstract (Annex 2) and sources in the Malaysian palm oil industry.

MPOC has not published an annual report over 2008. No information is provided by MPOC with regards to the replacement of the BoT seats left open by Pasir Gudang and Kuala Lumpur Kepong in the past year.

3. Nature of grievance described in detail and which of the four RSPO articles is being broken.

RSPO members have committed themselves bound to the Code of Conduct which states:

“2.1 Members will not make any misleading or unsubstantiated claims about the production, procurement or use of sustainable palm oil.”

MPOC is not a member of RSPO but key RSPO members have been and continue to be heavily represented in the MPOC Board of Trustees.

MPOC has never publicised information about the mandates of its Board of Trustee members. In view of the generally accepted roles and responsibilities of such Board of Trustee members (“directors” in MPOC’s company limited by guarantee), it is fair to assume that such directors are responsible to help shape the organization’s policies, carry responsibility for its practices at large and help implement the organization’s policies. Furthermore, the 2007 MPOC Annual Report highlights how MPOC’s Board of Trustee members have contributed to MPOC’s marketing efforts world-wide (Annex 1).

The members of the Board of Trustees are therefore assumed to be responsible for MPOC’s external communications. This is highly relevant, because in the last 2 years, MPOC has twice seen its advertisements banned from British media for breaches of the Advertising Standards Authority (ASA):

- On 9 January 2008, the United Kingdom Advertising Standards Authority (ASA) ruled that two TV ads produced by the Malaysia Palm Oil Council (MPOC) breached BCAP TV Advertising Code on several accounts and that the ads should not again be broadcasted by BBC for in their current form (Annex 4);
- On 9 September 2009, the ASA ruled that an MPOC ad published in The Economist breached several the Committee on Advertising Practice (CAP) on several accounts, and that the ad should not reappear in its current form (Annex 5).

In both instances, MPOC was duly heard by ASA and MPOC’s responses were weighed against the standards accepted by much of the advertising industry in the United Kingdom, resulting in a transparent adjudication.

After the first ASA ruling, MPOC published its defence to the complaint (Annex 6). The organization did not accept the complaint or ASA ruling and proceeded with producing online videos with content considered by Friends of the Earth to be even more explicitly misleading than the content reviewed by ASA in the first complaint.² Similarly, the 2009 MPOC ad in The Economist (Annex 7) ignored the ASA considerations of the first adjudication. After losing an ASA complaint for a second time, MPOC’s CEO stated last September:

- *“We are deeply concerned that the ASA (UK Advertising Standards Authority) is acting as an interested party in the public debate on palm oil rather than as a neutral and objective arbiter.”*

No further substance to this claim was provided.

² See the MPOC website: http://www.mpoc.org.my/Palm_Oil_Videos.aspx

Friends of the Earth wishes to highlight that the EU “Unfair Commercial Practice Directive” of 2005 prohibits misleading advertising. In the United Kingdom, this is regulated via ASA but the Directive also provides for the possibility to challenge cases in court.

RSPO must realise that on the one hand, consumers are confronted with RSPO’s message. An excerpt from RSPO’s preamble:

- *“While better managed plantations and oil palm smallholdings serve as models of sustainable agriculture, in terms of economic performance as well as social and environmental responsibility, there is serious concern that not all palm oil is being produced sustainably at present. Development of new plantations has resulted in the conversion of large areas of forests with high conservation value and has threatened the rich biodiversity in these ecosystems. Use of fire for preparation of land for oil palm planting has been reported to contribute to the problem of forest fires in the late 1990s. The expansion of oil palm plantations have also given rise to social conflicts between the local communities and project proponents in many instances.”³*

RSPO’s preamble thus acknowledges serious concern that not all palm oil is being produced sustainably. MPOC’s communications, on the other hand, attempt to dismiss such concerns and claims that (Malaysian) palm oil is sustainably produced. Over the past few years, MPOC has communicated numerous variations to this theme (see e.g. Annex 10), which is best summarized by citing a statement by the MPOC CEO in the mainstream Malaysian media:

- *“The planting of oil palm trees has always been carried out legally and responsibly.”⁴*

The essence of the grievance is that key RSPO members play dual roles by supporting the contradictory messages of RSPO and MPOC. This is likely to confuse and mislead palm oil consumers, policy makers and palm oil buyers outside Malaysia. These decision makers cannot be expected to distinguish between the conflicting messages communicated by MPOC and RSPO. After all, both organisations claim to promote (sustainable) palm oil, both are based in Malaysia and both organizations are regularly represented by the same individuals.

4. Supporting evidence, including all possible documentation, etc. to directly support the complaint.

Annex 1: MPOC Annual Report 2007

Annex 2: MPOC SSM abstract

Annex 3: Malaysia Sows the Seed of a Better Life, Business Times, 7 July 2008

Annex 4: ASA Ruling January 2008 (original complaint and MPOC defence available on request)

Annex 5: ASA Ruling September 2009 (original complaint available on request)

Annex 6: MPOC response to ASA January 2008

Annex 7: MPOC Ad in The Economist, 2009

Annex 8: MPOC Rejects Censorship Effort by British Advertising Authority

Annex 9: Malaysian Palm Oil Council Disagrees with British Advertising Authority Judgment

Annex 10: Malaysian palm oil - green gold or green wash? Friends of the Earth

Annex 11: MPOC response to Malaysian palm oil - green gold or green wash (letter to Friends of the Earth) November 2008

Annex 12: Friends of the Earth response to MPOC November 2008

³ See: http://www.rspo.org/About_Sustainable_Palm_Oil.aspx

⁴ Malaysia Sows the Seed of a Better Life, New Straits Times, 7 July 2008. See annex 3.

5. Details of previous steps that were undertaken to seek resolution directly, prior to turning to this procedure

In July 2007, Friends of the Earth filed its first complaint with ASA, resulting in the January 2008 ruling. ASA ensured that MPOC was duly heard in this process and ruled that MPOC's commercials were misleading and should not be broadcasted again.

In June 2009, Friends of the Earth filed its second complaint with ASA, resulting in the September 2009 ASA ruling. Again, ASA ensured that MPOC was duly heard in this process and, again, ASA ruled that the advertisement was misleading and should not reappear.

In October 2008, Friends of the Earth published a detailed report about oil palm expansion in Sarawak, linking the issues on the ground in this Malaysian state to a range of public claims made by MPOC and Malaysian government officials over the past few years (Annex 10). On 5 November 2008, MPOC responded to this report in a letter to Friends of the Earth. MPOC stated: "*we need an honest debate, not unfounded accusations*" (Annex 11). The MPOC response did not respond in substance to the content of the Friends of the Earth's report.

MPOC did propose a bilateral meeting with Friends of the Earth to find "*some common ground in the interest of protecting our environment, while allowing Malaysia as a developing country to continue its development*". On 26 November 2008, Friends of the Earth responded to MPOC (Annex 12), stating that in order to have such honest debate, MPOC's response as to what specifically are the "unfounded accusations" would be required.

Thereafter, Friends of the Earth never received further response from MPOC's CEO, or any of its Board of Trustee members. Hence, the offer to engage in a substantive dialogue was ended one-sided by MPOC.

6. Clear, concise and specific actions, activities that are needed to correct problems raised in the complaint.

Friends of the Earth requests the RSPO Executive Board to state its position on the following:

- 1) Whether the RSPO Executive Board considers the following claims, spread by MPOC over the past few years, as factually correct:
 - a) "*By 1990 we (Malaysia) have stopped approving new jungle areas to be covered under plantations.*"⁵
 - b) "*The planting of oil palm trees has always been carried out legally and responsibly.*"⁶
 - c) "*Zero-burning is enforced by Malaysia's laws.*"⁷
 - d) (NGO) *allegations (are driven by) protectionist agendas hidden under a thin veneer of environmental concern are based neither on scientific evidence, nor, for that matter, on fact.*⁸
 - e) *Under a programme administered by the Federal Land Development Authority (FELDA), four-hectare plots are distributed to landless farmers, who then receive*

⁵ Only 4m ha under oil palm in M'sia. Daily Express News, 19 May 2006. This claim was also made in MPOC's defence to Friends of the Earth's complaint filed against MPOC's "Gift of Nature" TV-commercial. UK Advertising Standards Authority (ASA), 2007.

⁶ Malaysia Sows the Seed of a Better Life, New Straits Times, 7 July 2008.

⁷ Claim made in 2008. See MPOC website: [mpoc.org.my/main_mediacycenter.asp].

⁸ Palm Oil: The Green Answer. MPOC Advertorial in The Economist, 2009.

assistance in growing oil palms and working towards ownership of the land".⁹
(emphasis added)¹⁰

- 2) The acceptability that MPOC uses RSPO's name when arguing that palm oil production is sustainable / responsible / the "Green Answer" across the board.¹¹
- 3) Actions to be taken by the RSPO Executive Board against RSPO members who are also represented in the MPOC Board of Trustees, noting that RSPO members are bound to comply with article 2.1 of the RSPO Code of Conduct and noting that MPOC has repeatedly made misleading or unsubstantiated claims about the production, procurement or use of sustainable palm oil.
- 4) Actions to be taken by RSPO to ensure that audiences approached during Malaysian international lobby tours (e.g. Europe, 12-20 November 2009) are made to understand how individuals associated with both RSPO and with MPOC represent conflicting messages about the production, procurement or use of sustainable palm oil.

⁹ Palm Oil: The Green Answer. MPOC Advertorial in The Economist, 2009.

¹⁰ See original sources for context.

¹¹ See: Palm Oil: The Green Answer. MPOC Advertorial in The Economist, 2009