

SUMMARY REPORT

Third Party Complaint; C.S.A. Guatemala

December 18, 2017



FAIR LABOR
ASSOCIATION™

On August 2, 2016, the Fair Labor Association (FLA) instituted a Third Party Complaint investigation with respect to the factory C.S.A. Guatemala Sociedad Anónima (hereinafter CSA Guatemala) located in Guatemala City. The complaint, filed by the Ad Hoc Committee of United Workers of the Enterprise C.S.A. Guatemala Sociedad Anónima (hereinafter the union in formation), alleged a range of worker rights violations, centering on freedom of association, and including abusive treatment of workers by management, forced overtime, failure to pay workers' wages on time, and failure to pay workers required benefits. The allegations appeared to violate a number of Compliance Benchmarks associated with FLA Code Elements on Freedom of Association, Harassment or Abuse, Hours of Work, and Compensation.

FLA-affiliated companies Nike, Inc. (Converse brand¹) and Delta Apparel (Junkfood Apparel brand²) sourced from the factory at the time the complaint was submitted.

The FLA informed the two affiliated companies that the complaint had been accepted and moved to Step 2 of the Third Party Complaint process. Under Step 2, the affiliated company or companies have up to 45 days to assess the allegations

¹ At the end of 2016, Nike (Converse) ended sourcing from CSA Guatemala.

² As of March 31, 2017, Delta Apparel sold the Junkfood Clothing Company to an investor, JMJD Ventures, LLC.

and submit a report to the FLA with an assessment and potential remediation steps. Alternatively, the affiliated company or companies may waive the company investigation and move to case to Step 3, where the FLA identifies a third party monitor to conduct an investigation.

Both FLA-affiliated companies chose to conduct their own assessments of the allegations and submitted individual reports to the FLA. As the two reports were similar in most respects, they are treated jointly in what follows.

ASSESSMENT BY FLA-AFFILIATED COMPANIES

The assessments by the FLA-affiliated companies coincided with respect to a series of findings:

- In the first quarter of 2016, a group of workers at CSA Guatemala attempted to form a union. They followed the steps set out in national law. On March 19, they created an Ad Hoc Committee, a precursor to the formation of a union, and filed a Collective Economic Social Judgment against CSA Guatemala. On March 21 they informed the pertinent labor authorities about it. Once this notification occurs, the members of the Ad Hoc Committee have fuero sindical protection.
- Shortly after the Ad Hoc Committee informed the pertinent authorities, management dismissed the 20 workers

who had established the Ad Hoc Committee. Management did not seek authorization from government entities to institute the dismissals, as would be required by national law for workers covered by fuero sindical protection.

- Although there is conflicting information, over the days following their dismissal, all 20 dismissed workers formally resigned from the factory, signing a document to this effect which indicated that they had received the termination benefits due them. In the same period, the members of Ad Hoc Committee signed a notarial deed resigning from the Collective Economic Social Judgment and voluntarily dissolving the Ad Hoc Committee. There have been challenges with regard to the authenticity of some of the signatures on these resignation documents and, moreover, some workers stated that they signed blank sheets of paper, to which management presumably added the resignation language post facto .
- In mid-June, Gap Inc., the largest buyer at the factory, negotiated an agreement with factory management whereby the 20 dismissed workers would be reinstated to their original jobs with back pay, maintaining seniority, free of reprisals, and retaining in full their associational rights. Information about this remediation action was shared with other brands and civil society organizations.
- The dismissed workers were scheduled to return to their jobs at the factory on July 18. On that date, none of the workers arrived at the factory to be reinstated. This was witnessed by the Ministry of Labor and reflected in a document drafted by the Ministry of Labor officials on that date. It has also been alleged that eight of the workers showed up at the factory to be reinstated, but were not granted admission because of confusion about the date when the reinstatement were to occur. This latter allegation could not be verified.
- On June 21, the factory formally offered a second rehiring opportunity to all dismissed workers. The 20 dismissed workers received in writing a notification from the Executive Vice President of the company. In this communication, CSA Guatemala gave a period of eight days (until July 29) for any of the dismissed member of the Ad Hoc Committee to be reinstated if he or she so chose. The factory expressed in writing a commitment to pay back wages, respect worker´s seniority, and refrain from taking any retaliatory against workers and their associational interests. Factory management has reported that none of the eligible workers arrived at the factory to be reinstated within the stated period. However, there is conflicting information as to why workers did not show up.
- Payroll audits revealed a discrete number of cases of overtime paid incorrectly and vacation time not paid in full to two workers.
- The factory’s grievance procedures are not well known by workers and even management.
- Communication between workers and management is strained. Management officials often communicate with workers in harsh terms, using inappropriate language.

REMEDIATION ACTIONS BY FACTORY/BRANDS

CSA Guatemala management, with the collaboration of Nike, Inc. (Converse) and Delta Apparel (Junkfood Apparel) developed a remediation plan consisting of the following main elements:

<p>Freedom of Association</p>	<ul style="list-style-type: none"> • Create factory policy and procedure to allow workers to establish and join organizations of their own choosing without retaliation; • Develop grievance procedures. • Build capability in industrial relations function within the factory. • Allow dismissed workers to return to the factory together with a worker representative to discuss terms of reinstatement. • Factory management to sign a Memorandum of Understanding guaranteeing that they will not take any retaliatory actions against the rehired workers.
<p>Status of Remediation</p>	<ul style="list-style-type: none"> • With assistance from external experts, factory management reviewed and revised policies and procedures regarding freedom of association. The revised policies became effective in August 2016. The revised policies and procedures are in accord with national law regarding freedom of association. • Factory management redesigned the grievance mechanism as well as the system of suggestion boxes effective April 2016. Procedures for reviewing grievances and suggestions were adopted, which include timelines for responding to complainants as well as feedback mechanism. Procedures also include guarantee that those raising grievances/suggestions will not be the subject of retaliation by management. • On May 31, 2017, top management (Executive Vice President and Production Manager) held a meeting with all employees at which they publicly indicated that the factory respects the right of all workers to freedom of association and collective bargaining and explained the different communication and grievance channels available to workers. • Factory management organized and sponsored trainings for top- and mid-level managers and supervisors on freedom of association, grievance systems, communications skills, and local laws. The first set of trainings was held in July 2016. The second set of trainings, conducted by COVERCO, a local labor NGO, was held in January 2017. • Factory management conducted trainings for middle management on communication skills, conflict resolution, effective communication, and freedom of association on September 1, 2016. This was followed by a second session for the same audience on management skills for middle managers delivered on September 29, 2016.

Status of Remediation	<ul style="list-style-type: none"> • Pursuant to the agreement reached with Gap Inc., dated June 21, 2016, factory management set up a schedule for the reinstatement of the 20 dismissed workers with the seniority they had and back pay to the day they went off the payroll. Similarly, labor courts ordered the reinstatement of workers. Although the factory extended the time for the return of workers until July 29, 2016, still none of the workers returned to the workplace. • Factory management signed and made available to all levels of management in the enterprise a document dated June 21, 2016 guaranteeing no retaliation against any returning worker.
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Communication with Workers	<ul style="list-style-type: none"> • Provide formal communication to workers on the conflict and its resolution including how and why the decisions were made. • Build worker-management communication capability and skills and create system to promote better engagement with workers. • Reinforce grievance mechanism and improve responses towards grievances.
Status of Remediation	<ul style="list-style-type: none"> • On May 31, 2017, top management (Executive Vice President and Production Manager) held a meeting with all employees at which they described the different channels of communication available at the factory, including grievance procedures and other means for gathering worker inputs, such as suggestion boxes. • Factory management has developed a communication plan intended to engage all workers; management has been meeting regularly with a workers' committee to improve communication and for management to hear comments and suggestions from workers. • Factory management will conduct regular confidential surveys of employee satisfaction to identify concerns and hear recommendations for changes desirable by workers; results of surveys to be made available to workers/ posted on bulletin boards. The first survey was conducted on August 2016. Similarly, communications received through suggestions boxes will be made public together with management's response. • Factory management has acted favorably upon suggestions regarding: (1) setting up a program for pregnant mothers (providing information as well as gifts and necessities for new mothers); (2) establishing a grocery store within the factory that provides credit to employees for basic household products; (3) a medical day when several specialist doctors provided free services to workers and their families; and (4) creating and financing a football championship involving workers in the factory. The activities have been announced throughout the factory for the general information of all workers.

Conclusions: The assessments conducted by the two FLA brands confirmed many of the allegations included in the Third Party Complaint. The factory, working with the two FLA brands, developed a remediation plan that addressed the findings. Through a review of documentation from the factory provided by one of the brands, the FLA has confirmed that the remediation embodied in the plan has been implemented.