

SUMMARY REPORT

Third Party Complaint; Topy Top S.A. (Peru)

October 11, 2017



FAIR LABOR
ASSOCIATION™

On August 10, 2015, the Fair Labor Association (FLA) received a Third Party Complaint from the Sindicato de Trabajadores Obreros de Topy Top S.A. (SINTOTTSA) in Peru. The union alleged a series of violations of worker rights, principally freedom of association and anti-union discrimination, at the factory Topy Top S.A. (hereinafter Topy Top). HUGO BOSS, a Participating Company of the FLA, sources from Topy Top.

More pointedly, the complaint from the union alleged that since January 1, 2015, 40 officials and members of SINTOTTSA were dismissed by Topy Top management. According to the union's complaint, one of the dismissed workers was a union official, whose dismissal should have followed a special procedure, which was not followed by the factory. A second worker allegedly was dismissed improperly for excessive absences, which were consistent with his role as a union officer. Overall, the complaint alleged that union members have been systematically discriminated against and dismissed – in some cases by not renewing their temporary contracts – as a way to weaken the union. The allegations raised in the complaint relate to FLA Freedom of Association Compliance Benchmark FOA.5, Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting.¹ The factory

¹ FOA.5, Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting. FOA5.1: Employers shall not engage in any acts of anti-union discrimination or retaliation, i.e., shall not make

practice of keeping workers with many years of service on short-term may also violate FLA Employment Relationship Benchmark ER.9, Recruitment and Hiring/Invalid Use of Contracts, Contingency or Temporary Workers,² despite being legal in Peru.

The FLA accepted the case at Step 2 of the Third Party Complaint Process. As such, HUGO BOSS had up to 45 days to provide the FLA with an assessment of the allegations and, if appropriate, relevant remediation actions.

ASSESSMENT BY HUGO BOSS

HUGO BOSS³ engaged an independent

any employment decisions which negatively affect workers based wholly or in part on a workers' union membership or participation in union activity, including the formation of a union, previous employment in a unionized facility, participation in collective bargaining efforts or participation in a legal strike.

2 ER.9. Recruitment and Hiring/Invalid Use of Contract, Contingent or Temporary Workers: Employers shall not: ER.9.1, use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms; ER.9.2, hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as a regular employment practice; or ER.9.3, make excessive use of fixed-term contracts or schemes where there is no real intent to impart skills or provide regular employment.

3 After HUGO BOSS had conducted its assessment and developed a remediation plan, the FLA learned that affiliated company Life is Good, a Category B Licensee, was also sourcing from Topy Top. Life is Good has also been involved in following up with Topy

consultant with extensive expertise in FLA processes, including Third Party Complaints, to conduct an assessment of the allegations. The consultant visited Peru from October 1 to 7, 2015. The investigation consisted of desk research and documents review, combined with interviews of management representatives; active and inactive workers; unionized and non-unionized workers; representatives of SINTOTTSA, the National Federation of Peruvian Textile Workers (Federación Nacional de Trabajadores Textiles del Perú, FNTTP); the AFL-CIO's Solidarity Center; PLADES (Programa Laboral de Desarrollo); and members of the Law Faculty of the Pontificia Universidad Católica del Perú.

The independent consultant reached, *inter alia*, the following conclusions:

- There is a high level of mistrust between SINTOTTSA and Topy Top management. There is a tendency for each side to take issues of disagreement to the Ministry of Labor or to the court system rather than to try to work out differences through dialogue.
 - Over the years, the lack of dialogue between management and the union manifested itself in different ways: some supervisors demonstrated behavior that discriminated against union members, while union leaders publicly criticized Topy Top, actions that management felt affected the company's sales and image.
 - Factory management has not developed objective criteria that have been communicated to workers to govern the short-term contracts that are renewed or not renewed to adjust to changes in production.
- The practice of keeping workers with many years of service on short-term contracts places a burden on workers, and violates the FLA Workplace Code of Conduct, despite being legal in Peru.⁴ It also places a burden on management, which has to spend resources on renewing contracts, resources that would be better used in improving labor-management relations.
 - Topy Top's actions in not implementing a recent decision by Peruvian authorities to regularize the work contracts of some workers, arguing that the appeal process is ongoing, fall short of best practices in corporate social responsibility.
 - Stakeholders consulted during the investigation overwhelmingly expressed the view that they had a genuine interest in seeing the labor-management relationship at Topy Top improve and the factory continue to operate in Peru and offer jobs to local workers

RECOMMENDATIONS, REMEDIATION PLAN, AND STATUS UPDATES

The consultant made an overarching recommendation to Topy Top, HUGO BOSS and SINTOTTSA, that in order to build the foundations for better communications that could lead to mutual trust between the parties, the services of a mediator respected by the company and the union should be engaged to facilitate regular face-to-face meetings and a process of dialogue between management and the union. During these facilitated meetings, specific aspects of remediation steps at the factory could be discussed between the parties.

Top management with regard to implementation of the remediation plan.

4 See the FLA's issue brief on this topic at: <http://www.fairlabor.org/report/short-term-contracts-peru>

The investigator had a series of recommendations for Topy Top management and for HUGO BOSS management. Recommendations for Topy Top management are listed below, followed by the Topy Top remediation plan developed with the support of HUGO BOSS, and the status of this plan as of August 2017:

Recommendation	Proactively engage in good faith dialogue with SINTOTTSA representatives and maintain open communication channels and regular meetings, jointly preparing agendas and keeping minutes of meetings. Union representatives should be treated as partners and kept abreast of company decisions in order to best support company's efforts.
Remediation Plan	Engage a mediator/moderator to support meetings between Topy Top management and SINTOTTSA representatives for at least six months. Mediator should be impartial and highly knowledgeable about Peru's labor context. Agenda of meetings to be jointly determined and minutes of meetings maintained. Meetings to start on a bi-weekly basis, and eventually to turn into monthly meetings.
Status	Ivan Ormachea, a professional mediator acceptable to both parties, was appointed in January 2016 and started his mediation activities in February 2016. Periodic dialogue meetings between the factory and SINTTOSA facilitated by the mediator continued through the fall of 2016. A new mediator, Luis Ore, was appointed in June 2017.

Recommendation	Genuinely evaluate the possibility of extending the length of contracts from short term to longer term or permanent; jointly with union representatives, develop objective criteria for renewal of contracts.
Remediation Plan	Define objective criteria for all employees in terms of position, seniority, performance, and conduct, in consultation with union representatives, and include such data in personnel files. Use these data in the decisions to renew contracts.
Status	The CEO and the Director of the Human Resource Department at Topy Top defined the objective criteria and shared them with labor representatives in April 2016. The criteria include quality of work, responsibility, productivity, technical knowledge, teamwork and commitment. Union representatives were not included in this process.

Recommendation	Review the cases of the workers whose contracts were not renewed in April 2015, and especially the workers whose cases were decided by the courts, with a view to reinstating them. Compensate reinstated workers as per court orders and review all pending sentences (even those appealed) and as a gesture of good will, compensate workers according to the sentences.
Remediation Plan	Topy Top management to review cases of all other dismissed workers (i.e., workers whose contracts were not renewed) and comply with court decisions, including decisions on compensation.
Status	Review of cases of workers whose contracts were not renewed placed on the agenda of the labor-management dialogue table.

Recommendation	Involve the union in the design and communication of (1) procedures for disciplinary measures; (2) grievance procedures; and (3) objective criteria for renewal/nonrenewal of contracts.
Remediation Plan	Involve the union, through the mediator, in the design and communication of personnel policies such as disciplinary measures, grievance procedures, and criteria for renewal of contracts.
Status	Remanded to the labor-management dialogue table. In addition, a general procedure for grievances and suggestions was established in March–June 2016.

Recommendation	Train supervisors to treat workers with respect and not to discriminate against union members.
Remediation Plan	Train supervisors to treat workers with respect. Train workers and supervisors on prevention of discrimination, freedom of association, and calculation of efficiency and performance. Train workers and supervisors on workplace standards and corporate social responsibility.
Status	Training for supervisors on respectful treatment of workers conducted in December 2015 and again in May 2017. Every July for the last three years, the company has been training all employees, including supervisors, in matters related to Corporate Social Responsibility and on principles embodied in Worldwide Responsible Accredited Production (WRAP) principles in the context of annual WRAP recertification. Freedom of association is one of the principles in the WRAP code.

Recommendation	Reinforce training for workers and managers on non-discrimination, freedom of association, and calculation of efficiency. Provide training on the conduct of negotiations for all individuals – management and workers – involved in bargaining.
Remediation Plan	Train workers and supervisors on prevention of discrimination, freedom of association, and calculation of efficiency and performance. Top management to make a statement to all workers, in Spanish, expressing respect for freedom of association. Union to be involved in the preparation of the text. Statement could be delivered at a Town Hall meeting.
Status	<p>Training of supervisors and workers on prevention of discrimination, freedom of association, and calculation of efficiency and performance completed in the first half of 2016. Also in 2016, workers and supervisors were trained on the Management and Human Development guidelines of the Worldwide Responsible Accredited Production (WRAP) system, which cover discrimination, freedom of association, prohibitions on child labor and forced labor, hours of work, wages, and so on. Training of managers and supervisors on CSR and codes of conduct was conducted in June 2017 by third party Intertek.</p> <p>The plant manager made the announcement on workers' right to freedom of association at a town hall meeting in 2015. The statement by Topy Topy management on freedom of association was posted in bulletin boards and other public locations within the factory in May 2015.</p>

Recommendation	In general, rehire former workers, including union members, instead of recruiting new workers.
Remediation Plan	Management to rehire former workers, including those whose contracts were not renewed, to fill vacancies. Factory to consider the seniority of workers when reinstalling them or renewing contracts.
Status	Management agreed to rehire former workers to fill vacancies pending their availability and interest in returning to Topy Top. Issue was placed on the agenda of the labor-management dialogue table. Factory management began to implement a policy of considering seniority of workers when reinstalling them or renewing contracts effective in 2016. Management notes that it has always considered the original date of accession of workers when implementing judicial orders.

In addition, with respect to the dismissed high-level union official, Topy Top has agreed to implement at once the decision by the courts. This litigation continues, as of August 2017, but the factory has agreed to respect and abide by all decisions of the Superintendencia Nacional de Fiscalización Laboral (SUNAFIL) and of labor courts.

Topy Top management also agreed to review its legalistic approach to labor management relations and seek win-win solutions that would be beneficial for the factory and for workers. This is an issue on the agenda of the labor-management dialogue table under the purview of a new mediator, beginning in June 2017.

Finally, the factory agreed to involve the union in decisions that will have an impact on employment levels and to develop a written agreement between management and the union concerning joint measures of future cooperation. This will be accomplished through periodic operational level meetings between the union and the Operations Management and the Human Resources Department and also through the labor-management dialogue table.

CONCLUSION AND NEXT STEPS

The Third Party Complaint filed by the SINTOTTSA union set in motion a process whereby Topy Top buyer HUGO BOSS commissioned an in-depth assessment of the practice of freedom of association at the factory by an expert consultant and put in place – jointly with Topy Top management – a remediation plan that addressed recommendations by the consultant.

Implementation of the remediation plan is progressing. Key to the success of the remediation plan is the dialogue table between management and the union facilitated by a professional mediator chosen by the parties. Although the dialogue process began in the first quarter of 2016, by the fall of 2016 unfortunately it saw a slow-down of progress due to opposing views of SINTOTTSA and Topy Top management with respect to certain areas within the mediation process.

In the first quarter of 2017, Topy Top management and the SINTOTTSA union decided to relaunch the labor-management dialogue, facilitated by a different professional

mediator to continue the productive exchange that had started in 2016. The two sides exchanged communications regarding a candidate that might be agreeable to both parties and a mutually-agreeable mediator has been appointed. The new mediator, Mr. Luis Ore, began to meet with the parties to the dialogue in June 2017 in order to set the bases for the mediation. HUGO BOSS has continuously monitored and supported this process.

The FLA calls on HUGO BOSS and Life is Good, a Category B Licensee of the FLA, to work with Topy Top management to continue to support a labor-management dialogue process that would create the basis

for the parties to discuss and negotiate over differences and find positive solutions that address the needs of both sides and promotes dialogue. More specifically, the FLA calls on HUGO BOSS and Life is Good to support Topy Top management in developing and implementing, together with the union, functioning grievance mechanisms consisting of multiple reporting channels, at least one of them is confidential; engaging with SINTOTTSA to encourage them to communicate in good faith with Topy Top management; and maintain regular communication with Topy Top management and conduct regular assessments to confirm progress.