On July 12, 2011, the Fair Labor Association (FLA) issued an interim report regarding a Third Party Complaint (3PC) filed by representatives of Sindicato de la Industria Textil y Actividades Conexas y Similares (SITS) alleging violations with respect to Freedom of Association and Harassment or Abuse at the factory Apple Tree in El Salvador. The interim report described remediation actions taken by FLA-affiliated companies Russell Brands/Fruit of the Loom (“Russell Brands”) and M.J. Soffe to address the issues identified in the 2010 FLA Independent External Verification (IEV) event conducted at Apple Tree and to implement FLA’s recommendation to create an ombudsperson position at the factory to:

1. develop and/or fine tune a remediation plan that would address not only the IEV findings but also those that emerged from the Third Party Complaint allegations;
2. monitor remediation implementation;
3. provide consulting services/advice to the unions and management on how to deal with labor relations issues;
4. receive grievances and seek remediation; and
5. report on the implementation progress of the remediation plan and outstanding issues.

Overview of Ombudsman’s Report

Russell Brands and M.J. Soffe jointly appointed Juan Jose Zaldaña, a Salvadoran lawyer specializing in constitutional and human rights law, and professor at Universidad de El Salvador, to be an Ombudsman at Apple Tree for a period of four months, from August to November 2011. The ombudsman:

- held meetings with factory representatives, including the owners of Apple Tree;
- conducted meetings with representatives of both unions – SITS and STITAS;
- arranged a dedicated phone line to attend to issues, complaints, or questions by any workers at Apple Tree;
- organized meetings with workers, either coordinated by the two union board leaders or through workers’ own initiative;
- inspected and monitored conditions in the workplace; and
- evaluated the type and method of communicating information to workers.

Some of the actions on IEV findings reported by the Ombudsman as having taken place include 1:

- development of a training calendar for workers and management on Code of Conduct, Apple Tree’s policies and procedures, PPE usage, etc.;
- installation of an irrigation system on the roof to cool the factory and of thermometer reading stations; repair of broken fans;
- maintenance of the bathrooms, including a staffing process to ensure cleanliness;
- development of an enhanced Freedom of Association policy and procedures; and,
- creation of a policy and procedure to ensure that nursing mothers are aware and use their right to one-hour breastfeeding/lactation opportunity.

The principal issue regarding Freedom of Association identified in both the IEV findings and the Third Party Complaint was two-pronged:

1. management’s preferential treatment and privileges favoring one union over another; and
2. management’s interference with workers’ affiliation with SITS.

With respect to Freedom of Association, the Ombudsman reported that the owner of Apple Tree agreed to modify these practices and to enhance its Freedom of Association policy and practice. Specifically, Apple Tree:

- changed the role of the STITAS leader so that she no longer has the ability to move freely through the factory and potentially engage with employees on union matters during work hours;
- strengthened Apple Tree’s freedom of association and anti-union discrimination policy, including adding a disciplinary process if there is violation of the policy and a training component to communicate it to all factory employees; and,
- developed a procedure to deal with workplace issues, including meeting and consulting with each trade union.

**Additional Allegations Addressed by the Ombudsman**

The Ombudsman also reported on the status of the additional allegations made in the Third Party Complaint.

- Allegation: SITS members are moved around to different production lines resulting in lower production performance and potential loss of production bonuses.

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1 The full tracking chart detailing noncompliance findings and remediation plan can be found at http://portal.fairlabor.org/fla/go.asp?u=/pub/zTr5&tm=5&Rid=701&Fdn=11&Fna=46002203DV%5FEI+Salvador%2Exlsx.
- Ombudsman: SITS members remain at their production lines but the work is continually interrupted when SITS members stop their work to address issues that arise at work or at other factories where the federation FESS has members. After dialogue with management, the practice has improved with the designation of a single spokesperson from the union to deal with any issues that may arise.

- Allegation: SITS affiliates in the Packing Department are not provided the opportunity to work overtime.
  - Ombudsman: Verified that all workers at the Packing Department are provided the opportunity to work overtime when such work is needed.

- Allegation: Security personnel reprimand SITS members when they arrive late at the factory, even if they are late by only a few minutes.
  - Ombudsman: Verified from speaking to SITS members that the harassment or excessive surveillance was not by factory security guards but from security personnel employed by the free trade zone.

- Allegation: Loan program offered by Apple Tree is denied to SITS members.
  - Ombudsman: Apple Tree developed a policy for granting loans that will be applied equally to all workers.

- Allegation: SITS Board Members have not received feedback from Apple Tree management regarding complaints/issues they have raised.
  - Ombudsman: A monthly meeting has been organized between management and union/s to encourage dialogue around issues at the factory.

- Allegation: SITS members are not provided paid leave.
  - Ombudsman: Two-day paid leave per month is provided to all workers who receive permits.

- Allegation: Verbal harassment by the HR Director.
  - Ombudsman: HR Director received training and has shown improvement in the way he addresses and disciplines workers.

Other Issues Raised

Through the Ombudsman’s consultation with the two unions at Apple Tree, meetings with workers, and complaints received through the dedicated hotline, there were a number of additional issues that were brought to his attention:

- Mistreatment of supervisors and workers by the Chief of Production.
  - The Chief of Production underwent training and position was redefined. This issue was resolved.

- Payroll miscalculations.
  - This issue was resolved with the hiring of additional staff to prepare payroll.

- Condition of the restrooms.
- Temperature too hot inside factory.
  - This issue was resolved through the installation of an irrigation system on the roof of the factory, proper maintenance of fans, and raising the height of lighting. In addition, a process of measuring the ambient temperature throughout the day has been implemented.
- Insufficient canteen space.
  - This issue was partially resolved by providing additional tables and benches in front of the factory, where workers can eat. The factory plans to install sun and rain protection to safeguard these areas.

Verification by the Complainants Regarding Ombudsman’s Report

On April 21 and July 25, 2012, FLA staff met with the complainants -- union leaders of SITS at Apple Tree -- to discuss the Ombudsman’s report and obtain reactions and additional feedback of their perspective of the current working conditions at the factory.

The complainants stated that they have seen improvements in working conditions since they filed a Third Party Complaint with FLA. They agreed with the Ombudsman’s report that there were improvements in the following areas:

- Significant decrease of verbal abuse from supervisors;
- Significant improvements in the area of Health and Safety;
- Additional tables and chairs provided for workers for their breaks;
- Adequate information provided to workers regarding workers’ rights and Code of Conduct;
- Calculation of benefits corrected;
- Correct calculation of Christmas bonuses;
- SITS members are no longer shifted from their production lines;
- Surveillance and intimidation by factory guards have been corrected;
- Management granting one-hour leave for mothers to breastfeed.

However, they disagreed with the Ombudsman’s assessment of progress in the areas of Freedom of Association and anti-union discrimination. They asserted that:

- Although decreasing, STITAS continues to receive preferential treatment from management;
- Management maligns SITS by telling the workforce that production orders were decreasing and no new buyers were sourcing at the factory due to SITS union activities; and,
- The factory loan policy requiring workers to have a bank account as a condition for applying for a loan was unfair.

As an additional issue, union leaders mentioned that they do not sense any improvements in ambient temperature, despite the installation of a mist irrigation system.
Conclusions and Next Steps

Although it is promising that significant improvements have been made at Apple Tree since the beginning of the FLA Third Party Complaint Procedure, greater effort and prioritization needs to be focused to create a robust communication channel between management and both unions – SITS and STITAS. Although a draft Memorandum of Understanding (MOU) has been developed by the Ombudsman that outlines a process for dialogue between the unions and management, the MOU has yet to be signed by the respective stakeholders. The FLA strongly recommends that management and the unions sign the MOU and begin a process to deal with the remaining issues that have been identified in this report.

Of utmost importance is management’s implementation of its policy regarding Freedom of Association and Collective Bargaining. Because of the presence of two unions at the facility, it is imperative to ensure that there is no preference -- or perceived preference -- for one union over the other and to work with both unions to ensure that equal treatment is understood and maintained. Of particular concern is the rumor that circulated that the factory’s loss of orders was because of SITS union activities in Apple Tree. This is the second reported incident of this nature since the complaint was filed. The FLA strongly recommends that Russell Brands, MJ Soffe and Apple Tree management investigate the source of the rumors and put an end to this type of anti-union harassment.

Finally, there is evidence that anti-union harassment and intimidation by security personnel employed by the free trade zone is pervasive and that there is a much broader political context related to the issue of Freedom of Association and Collective Bargaining occurring in the San Marcos Free Trade Zone.

Irrespective of the situation, it is FLA’s position that no worker employed in the San Marcos Free Trade Zone should experience harassment or abuse and targeted anti-union intimidation due to their union affiliation and it is not acceptable for owners and management of factories or companies sourcing from facilities in the San Marcos Free Trade Zone to stand idle and not take proactive measures with the appropriate authorities to stop these practices.