

## Summary Report:

Third Party Complaint; Apple Tree El Salvador S. A.

January 31, 2017



**FAIR LABOR**  
ASSOCIATION™

On August 8, 2015, the Fair Labor Association (FLA) accepted for review a Third Party Complaint filed by a representative of the union Sindicato Salvadoreño de Industrias Textiles y Similares (SSINT), a union undergoing the legal registration process as the time the complaint was filed. SSINT was intended to be formed as an industry union by workers from the factories Apple Tree S.A. de C.V. and F&D S.A. de C.V., and affiliated to the FUERSA Federation (Federación de Unidad de Trabajadoras y Trabajadores de El Salvador).

The complainant alleged that the factory Apple Tree El Salvador S.A. (henceforth “Apple Tree”) violated the right of freedom of association of a worker who was dismissed by the factory despite the worker enjoying fuero sindical protection provided by national law to workers who are founders of a labor union. The allegations appeared to violate FLA Compliance Benchmark Freedom of Association FOA.5, Anti-Union Discrimination/Dismissal, other Loss of Rights and Backlisting. FLA-affiliated Participating Companies Dallas Cowboys Merchandising, Ltd., Delta Apparel and VF Corporation sourced from this factory at the time of the alleged violation.

The FLA accepted the case for review, informing the three affiliated companies of the action and moving the case to Step 2. Pursuant to Step 2, the Participating Company or College or University Licensee

has up to 45 days to investigate the alleged noncompliance internally and inform the FLA. Alternatively, the affiliated company or companies can waive the internal investigation and allow the FLA to move the process to Step 3, engaging an external expert or monitor to conduct an assessment.

### Independent Investigator Report

The FLA designated Jessica Vásquez, Civil Society Organization Engagement Manager for the Americas, based in Guatemala, to conduct the independent investigation. The terms of reference for the investigation included:

1. Investigate reasons and conditions surrounding the employment termination of the SSINT union founder.
2. Review procedure followed by Apple Tree management with respect to the employment termination of the SSINT founder. Document whether the procedure followed in the case of the worker in question follows the pattern of other terminations of employment at Apple Tree.
3. Review documentation issued by the Ministry of Labor (e.g., documents related to union registration) pertinent to the case.

The investigator conducted her work from September 1 to September 3, 2015. Within Apple Tree, which is located in

the San Marcos Free Trade Zone, she interviewed workers and management representatives and conducted a visual inspection of the facility. She interviewed the following individuals: 10 workers across different departments; 4 members of worker organizations present at Apple Tree; 2 supervisors; and representatives of Apple Tree management. Outside of Apple Tree, she interviewed the terminated worker as well as representatives of the FUERSA Federation, the SSINT union, and the Ministry of Labor. She also reviewed official documentation from the Ministry of Labor and internal factory documentation, such as HR policies and procedures.

## Summary of Findings and Recommendations

Significant findings of the investigator's report include:<sup>1</sup>

**1. Reasons and conditions of the termination of employment relationship of the SSINT founder.** The investigator found several indicia that pointed to the dismissal by management of the SSINT founder. The investigator was also presented with a resignation letter signed by the SSINT founder. At the time of the investigation, the authenticity of the signature by the worker was in dispute and was the subject of a law suit filed by the worker.

**2. Policies and procedures within Apple Tree to deal with termination procedures and in particular the procedure followed**

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<sup>1</sup> The full report of the investigator, in English and Spanish, is available at <http://www.fairlabor.org/report/apple-tree-el-salvador-sa>

**in the case of the SSINT founder.** The investigator found that Apple Tree lacks written policies and procedures that set out the legal criteria, procedural steps, and responsibilities for the termination of worker contracts, whether by resignation or dismissal.

**3. Status of the terminated worker within the newly-formed SSINT union.** The investigator documented that Apple Tree was informed by the Ministry of Labor and Social Security that the worker was a founding member of SSINT the day before the termination of employment of the worker.

## FLA Assessment

Investigation and remediation of the allegations of violation of freedom of association raised by this Third Party Complaint turned out to be very complex. The very critical issue of whether a violation of freedom of association occurred turned on the form that the employment termination took place: the affected worker and union representatives insisted that it was a dismissal motivated by anti-union discrimination, while factory management presented documentation supporting the position that the worker had resigned voluntarily and therefore there was no violation of freedom of association. The worker initially challenged the authenticity of the signature on the resignation document, but in December 2016 she dropped the legal challenge, rendering the principal issue regarding freedom of association raised in the complaint moot.

There are, however, some related findings

from the investigator that call for immediate remediation by the factory and the brands. In particular: (1) revision of factory's policies and procedures regarding employment termination and freedom of association to ensure that they are consistent with national law, FLA benchmarks and buyers' codes of conduct; and (2) continuously train workers, supervisors, middle management and upper management regarding freedom of association.

### **Proposed Remediation Plan**

- 1.** The factory shall revise their employment termination and freedom of association policies and procedures to make them consistent with national law, the FLA benchmarks and buyers' codes of conduct. If there is a conflict between the different standards, the most stringent standard shall be used. (Completed.)
- 2.** The factory shall provide training to workers, supervisors, and management on the revised policies and procedures, and shall incorporate this training into an

ongoing schedule of refresher training to existing employees and new employees. (Completed.)

- 3.** The factory shall incorporate into the training a way to measure its effectiveness (e.g., retention, comprehension) and use the learnings to guide improvements for future training. (Completed.)

### **FLA Recommendations and Next Steps**

Because the central issue in the complaint has been rendered moot, the FLA considers the Third Party Complaint to be closed. The FLA recommends that Dallas Cowboys Merchandising, Ltd., Delta Apparel and VF Corporation periodically monitor the implementation of the remediation plan to ensure that the referenced changes to employment termination and freedom of association policies and procedures are made and applied, and that workers, supervisors, and management are trained on the new procedures.