

Update and Guidance for University Licensees on Violations of Freedom of Association during Covid-19 Pandemic

I. Introduction and Summary

The economic impacts of the Covid-19 pandemic are contributing to incidents of unlawful retaliation by garment factories against workers for peaceful exercise of freedom of association rights, particularly in Southeast Asia.¹ In many of these cases, the brands that have been buyers from these factories are failing to take timely and meaningful action to either prevent or even adequately correct these abuses. This phenomenon poses significant risks for workers who make university logo apparel.

As detailed in the following memorandum, such acts of retaliation have included:

- Subjecting individual worker activists to arrest and imprisonment on baseless criminal complaints for speaking out about factory conditions; and
- Discriminatory mass dismissals, in which factories use the justification of economic layoffs necessitated by loss of orders to target those workers in their factories who have joined unions.

Both forms of retaliation violate workers' right to freedom of association under both local labor laws and international labor standards,² and, in the case of factories producing university licensed goods, university codes of conduct.³

As the Covid-19 pandemic and its economic impact on global supply chain exposes workers to both economic harm, in the form of layoffs and plant closures, and occupational health risk, from potential workplace exposure to the virus, ensuring respect for workers' rights to speak and act collectively to protect their own safety and welfare is more important than ever. As outlined in this communication, licensees and brands doing business with factories that violate these rights must take strong and timely action to require factories cease such misconduct and implement the remedial actions that are needed to prevent serious and irreparable harm to workers and their fundamental rights.

This memo discusses several significant examples of this troubling trend of violations of freedom of association, particularly as it has emerged in garment factories in South and Southeast Asia, including the Worker Rights Consortium's (WRC) engagement in these cases

¹ Elizabeth Paton, "Union Garment Workers Fear 'an Opportunity to Get Rid of Us,'" *The New York Times*, May 8, 2020, <https://www.nytimes.com/2020/05/08/fashion/coronavirus-garment-workers-asia-unions.html>.

² International Labor Organization Conventions 87 (Freedom of Association and Protective of the Right to Organize) and 98 (Right to Organize and Collective Bargaining).

³ CLC, "Special Agreement on Labor Codes of Conduct," Sched. I, Sec. II.B.9 ("Licensees shall recognize and respect the right of employees to freedom of association and collective bargaining.").

with licensees and other brands to secure remediation and corrective action. The memo highlights how, in many of these cases, brands have failed to take such actions in a timely manner to prevent harm to workers and their rights.

This memo provides guidance to licensees and brands as to the minimum remedial steps that must be swiftly taken in any such cases of retaliation in order to ensure that this fundamental workplace right is protected and preserved.

II. An Outbreak of Retaliation against Workers

The onset of the Covid-19 pandemic quickly threw the global garment industry into a state of crisis as collapse in consumer demand for apparel led to brands and retailers cancelling billions in orders for garments, and factories faced government-ordered public health closures.

Ordinary workers and workplace leaders have spoken up to demand that, in responding to the crisis, factories respect local laws and follow guidance established by government labor ministries. During this time, workers and their unions have called on factories to make required wage payments during public health shutdowns, obey authorities' directives to maintain employment, and, as they have reopened, take measures to protect workers' health and safety.

Some employers have responded to workers' advocacy efforts with severe forms of retaliation meant to intimidate workers and silence their voices—including not only dismissals of employees but, in the case of some worker leaders, the filing of false criminal complaints that have resulted in months of imprisonment.

The WRC has been responding to this troubling outbreak of violations of workers' associational rights by, first, documenting these cases and, then, calling upon university licensees and other brands to require supplier factories who commit such abuses to not only cease such misconduct but take meaningful steps to correct them.

The following are examples of such violations and of the response of relevant brands.

Myanmar—Factory that Produced Collegiate Apparel Targeted Union Members, Leaders for Layoff

Starting in April, the factory, Popular Garment, in Myanmar (Burma), which, until the end of 2019, produced collegiate apparel for the university licensee, Cutter and Buck, terminated roughly 300 workers who were members of an independent union, including most of the union's in-plant leadership. Although the company claimed that the layoffs were economically motivated, an analysis performed for the WRC by a professional statistician determined that, given the overrepresentation of union members and leaders among the portion of the factory's workforce that was selected for layoff, the likelihood that the company had targeted employees based on union membership was greater than 99.99 percent. Upon being notified of the violations, Cutter and Buck committed to the WRC that it would inform the factory that any future business will be contingent on reinstating these workers and correcting other labor rights violations at the factory.

Cambodia—Worker at Luxury Handbag Factory Imprisoned for Facebook Message

Also in April, a worker leader from the Superl factory in Cambodia was arrested and imprisoned for more than 50 days as a result of a baseless criminal complaint filed against her by the owners of the factory, which produces (non-collegiate) handbags for the Michael Kors and Kate Spade brands.⁴ The owners targeted the worker solely on account of her having posted a Facebook message criticizing the factory's attempt to fire a pregnant employee and dozens of other workers, in contravention of guidance from Cambodia's labor ministry.

Despite brands' initial failure to take action when alerted to the case, following the publicizing of the worker's imprisonment by the WRC and other labor rights advocates, she was released, reinstated to her former position at the factory, and paid compensation for her detention. In addition, the factory committed to the workers' union to refrain from further retaliation.

Myanmar—Factory Supplying University Licensee Has Two Workers Imprisoned, 100+ Fired for Peaceful Protest for Safe Conditions

In early May, two workers from the Blue Diamond factory in Myanmar, which produced (non-collegiate) wallets for the university licensee, Vera Bradley, along with four other local labor advocates, were arrested, based on a criminal complaint filed against them by a factory manager. *Within 24 hours* they had been tried, found guilty, and sentenced to three months' imprisonment.⁵ The workers' "offense" was leading peaceful protests calling for safety protections as the factory reopened from a public health shutdown.

The company operating the factory, Vera Bradley's supplier, Rongson (Myanmar), also fired 100 other workers for participating in these lawful protests. Vera Bradley has responded to calls for it to engage with its supplier to secure the workers' release from prison by denying any connection to the Blue Diamond factory—even though workers have photographed Vera Bradley wallets that they produced and even though Vera Bradley's supplier, Rongson, was the workers' direct employer.

India—Major Garment Manufacturer Supplying University Licensees and Other Brands Targets Its Only Unionized Workforce for Termination

In early June, Gokaldas Exports, a major Indian garment manufacturer, announced that it was permanently laying off the entire workforce of its Euro Clothing Company II factory in Bangalore, India—a plant which produces exclusively for the retailer H&M.⁶ Gokaldas has

⁴ Annie Kelly and Harriet Grant, "Jailed for a Facebook Post: Garment Workers' Rights at Risk during Covid-19," *The Guardian*, June 16, 2020, <https://www.theguardian.com/global-development/2020/jun/16/jailed-for-a-facebook-post-garment-workers-rights-at-risk-during-covid-19>.

⁵ Nishita Jha, "A Woman Who Makes Bags for Michael Kors Was Sent to One of the Most Crowded Prisons in the World for a Facebook Post," *Buzzfeed News*, June 11, 2020, (article discusses freedom of association violations by both the Rongson factory in Myanmar and the Superl factory in Cambodia) <https://www.buzzfeednews.com/article/nishitajha/michael-kors-factory-worker-prison-facebook-post>.

⁶ Sophie Benson, "H&M's Supplier Is Using Cancelled Orders as a Cover for Union Busting," *Eco-Age*, July 22, 2020, <https://eco-age.com/news/hm-supplier-gokaldas-exports-using-cancelled-orders-to-cover-union-busting>.

previously made collegiate apparel and now supplies non-collegiate apparel to numerous major brands from a large network of production facilities.

More than 900 of the plant's 1,300 workers are union members, making it by far the most unionized of the companies' factories. Yet, despite the fact that H&M has stated that it has not reduced its orders from the company, Gokaldas chose this factory for closure, out of the more than 20 facilities it operates in the country. The WRC and other labor rights advocates are engaging with H&M and other Gokaldas business partners, including adidas and Columbia Sportswear, to seek a reversal of this layoff, which appears to target the facility's workforce on account of their union membership.

III. Recommendations to University Licensees and Other Brands

Freedom of association is a crucial *enabling right* that is both a core element of and promotes overall compliance with university and brand codes of conduct. Respect for this right enables workers to draw attention to and speak out against a myriad of workplace violations—from unlawful wage practices, to improper terminations, to harassment and unsafe working conditions. When workers exercising this right suffer retaliation, unless it is swiftly corrected and remedied, the result is to deny this right to the entire workforce—who are intimidated by the prospect of being similarly targeted—and to open the door to further violations of their rights.

For this reason, when faced with such retaliation against workers, university licensees and other brands must take action to protect associational rights that is *timely, forceful, and complete* in causing the violations to cease and making workers whole for any harms that they have suffered. In cases where employers have targeted workers exercising associational rights for retaliation through discriminatory termination or layoff or baseless criminal complaints, the following measures, at minimum, are needed:

- Immediately informing the supplier that the violation must cease and be promptly remedied as a condition of continued business;
- Requiring the immediate reinstatement of workers who have been retaliatorily terminated to their former positions with full back pay from the date of dismissal;
- Requiring that suppliers immediately withdraw any criminal complaints brought against workers related to their associational activities and use all available means to secure the workers' release from detention, dismissal of any pending criminal charges, and the appeal and reversal of any criminal convictions;
- Requiring the supplier to pay monetary compensation to workers who have been unjustly jailed or imprisoned in retaliation for their lawful associational activities; and
- Requiring the supplier to communicate to all employees that it will respect associational rights, refrain from any such retaliation going forward, and discipline any manager who engages in future misconduct.

The economic difficulties being experienced by factories and brands during the Covid-19 pandemic do not excuse employers and buyers from the responsibility to respect and protect workers' associational rights. To the contrary, it is at this moment, when workers are facing greater risks and vulnerability, that their ability to exercise these rights is especially vital.

The WRC will continue to investigate complaints of retaliation against workers for exercise of associational rights, engage with licensees and other brands to seek remediation of violations, and report where factory owners fail to respect this right and when buyers fail to protect it.