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December 15, 2011

Honorable Sharis A. Pozen
Acting Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Designated Suppliers Program for University-Licensed Products

Dear Ms. Pozen:

The Worker Rights Consortium ("the WRC") respectfully requests that you issue a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, with respect to the WRC's proposed Designated Suppliers Program ("the Program" or "the DSP") for college and university-licensed apparel and textile products.

The Program involves the efforts by participating colleges and universities ("the Schools") to respond to demand from students and other consumers for apparel bearing their respective names and insignia ("the Products") that is verified as having been ethically produced, i.e., manufactured in factories where workers' rights are fully respected. To enable Schools to make a wide range of these products readily available, the Program establishes model licensing terms ("the Proposed Licensing Terms") that would require factories manufacturing a School's Products to maintain ethical labor conditions by, among other things, paying workers "a living wage" and respecting workers' rights to freedom of association and collective bargaining.

Other aspects of the Program ensure that the ethical labor conditions afforded to workers are, in turn, economically sustainable for factories manufacturing a School's Products ("the Factories"). The distinctive characteristics of the Products' manufacture under ethical and sustainable labor conditions will be communicated to the participating Schools' students and other consumers through information provided at point-of-sale, on campus, and via the internet.

The WRC is a consortium of Schools generally committed to these goals. Its role is essentially limited to (i) monitoring the performance of licensees and Factories with regard to labor conditions that may be contained in a School's

licenses; and (ii) developing the Proposed Licensing Terms which are the basis for this Business Review Request for the DSP.

The standards embodied in the Program are being developed by the WRC and United Students Against Sweatshops ("USAS"), a national network of campus student organizations, in consultation with many of the WRC's affiliate Schools. Each School in considering whether or not to participate in the Program will decide to do so, or not, independently of any other School or of the WRC, itself, as a result of public dialogue on its own campus among students and university administrators.¹ The WRC does not know what proportion of its affiliate Schools is likely to choose to participate in the Program.

Each School that decides to participate will decide individually how to implement the Program in relation to its own licensing business, including in which licenses to include the Proposed Licensing Terms. Meanwhile, each producer of the Products ("Licensee") would have to decide whether or not to accept a license with the Proposed Licensing Terms which would require the Licensee to impose the specified wage and other operational requirements on the Factories.

The Program would involve no cooperation among Schools, apart from their affiliation with the WRC, and, on the part of some Schools, their participation in consultations with the WRC regarding the Proposed Licensing Terms. As explained below, it also would not involve any collaboration among Licensees. Finally, the Program would involve no collaboration at all among the Factories, themselves.

The efficiency and success of the Program requires the establishment of the Proposed Licensing Terms because the interests of the participating Schools are interdependent. The ability of each participating School to capture demand for ethically-produced Products among students and other consumers depends on the credibility of the information provided regarding the labor conditions under which they are produced. The Program performs common standard-setting and verification functions that enable participating Schools to acquire and share this information in a fashion that is efficient and credible to students and other consumers.

The Program's success also requires attracting and sustaining a sufficient volume of production of the Products at the Factories at a sufficient price to maintain stable employment for workers under ethical labor conditions. This

¹ This process has been extensively covered by the respective Universities' campus press. See, e.g., Scott Rosenthal, "C.U. Backs Anti-Sweatshop Activism," *Cornell Daily Sun* (Apr. 5, 2006) (discussing university's endorsement of the Program "after students gathered over five hundred signatures this past semester asking [its interim President] to support the DSP, . . . conducted teach-ins[,] and brought multiple speakers to campus including foreign textile workers."), http://www.workersrights.org/press/CornellDailySun_statement_4-5-06.pdf.

requires that a sufficient number of Schools include the Proposed Licensing Terms in enough licenses such that the demand from Licensees for Products meeting the Program's Factory Standards² will surmount the otherwise-existing barriers to Factories adopting ethical labor conditions.

As of this point, approximately forty Schools have separately indicated that, should the Department grant this request, they will consider implementing the Program; however, they are not under any obligation to do so. The Program will not be implemented until the Department has responded.

Implementation of the Program will depend on separate negotiations between each individual School that decides to participate and each of its respective Licensee(s), concerning both the Proposed Licensing Terms and their enforcement in particular cases. Under the Program, no collective action would be taken by Schools and/or the WRC against a School or a current or potential Licensee if (i) the School chooses not to participate in the DSP; (ii) the School chooses to participate in the DSP, but chooses not to include the Proposed Licensing Terms in particular licenses, or (iii) a would-be or current Licensee refuses to accept from a School a license containing the Proposed Licensing Terms. In the latter case, of course, an individual School would retain the right to decide independently to refuse to enter into or renew contractual relations with a Licensee that had rejected the Proposed Licensing Terms.

On the other hand, once a participating School and a Licensee have agreed upon a license incorporating the Proposed Licensing Terms, then the WRC would have certain *verification, monitoring and reporting* obligations. The individual School, however, would retain complete control over what *enforcement* action, if any, it would take against the Licensee for any alleged breach of the Proposed Licensing Terms by the Licensee, including any failure by the Licensee to ensure that a Factory manufacturing Products for the Licensee under the license complies with the Program's Factory Standards.

1. Background

Responding to ethical concerns raised by students and other consumers, Schools have long tried to ensure that apparel bearing their names and insignia are produced under fair and humane labor conditions. They generally have done this by including conditions in their licenses that require the Licensee to assure that the Factories meet certain minimum labor standards. Accordingly, numerous Schools -- acting alone, or with the Collegiate Licensing Company ("CLC") or the Licensing Resource Group ("LRG") as their agent -- have required their Licensees to abide by, and assure that their supplier Factories also abide by, special "labor codes of conduct."

² The specific content of these standards is discussed, *infra*, at 7-8.

The CLC and LRG have enforced the *commercial* terms of these licenses (e.g., royalties, technical performance, proper use of marks), but Schools have left investigation of compliance with their labor codes of conduct to the Fair Labor Association (“the FLA”)³ and/or the WRC. If an infringement of a *labor* code provision were found that could not be remedied at the Factory level, the FLA could take action vis-à-vis the Licensee as an FLA affiliate (including acting directly to revoke a Licensee’s FLA membership, if necessary). If the WRC were handling the investigation, the WRC would notify the Licensee and would report the infringement to any School whose products were being made at the relevant Factory, leaving it to that School to determine the appropriate action to be taken against the Licensee. Based on a report from the FLA or the WRC, the School then could exercise its power under the license to instruct its Licensee to take corrective action vis-à-vis the infringing Factory and/or to suspend or terminate the Licensee for failure to do so.

It is widely-acknowledged that the existing system of codes of conduct and monitoring of Licensees’ supplier factories has not secured the level of improvements in conditions for workers manufacturing the Products that Schools and students have sought. In well-publicized cases, factories in developing countries that have attempted to respect labor rights and improve working conditions have lost business and, eventually, shut down.⁴

Academic studies show that, even in the case of the largest Licensees, which participate in the leading industry-backed code-of-conduct regimes and have the most extensive monitoring programs, compliance with basic labor standards among their supplier factories is, at best, uneven.⁵ Moreover, without adopting, implementing and enforcing the model Proposed Licensing Terms that the Program establishes, unilateral efforts by individual Schools and/or Licensees to introduce Products made under higher standards – i.e., requiring payment of a “living wage”, and full respect for freedom of association and collective bargaining – are likely to face significant barriers-to-entry except in certain niche distribution channels.⁶

³ The FLA’s membership is broader than the WRC’s, in that it includes apparel companies. Most Schools that are FLA members are also affiliated with the WRC, and *vice versa*. However, the FLA’s membership also encompasses all university and collegiate licensees (including Nike, adidas and many smaller companies) as well as major apparel brands not associated with the collegiate market (e.g., Liz Claiborne).

⁴ See, e.g., Andrew Ross, *Nice Work If You Can Get It: Life and Labor in Precarious Times* 123-124 (NYU, 2009) (citing the high-profile closure of the unionized BJ&B factory in the Dominican Republic).

⁵ See, e.g., Richard Locke, Fei Qin and Alberto Brause, *Does Monitoring Improve Labor Standards?: Lessons from Nike* 18-19 (working paper) (Harvard, 2006) (citing “endemic problems with poor wages, excessive work hours, [and] harassment” at some Nike suppliers, and asking, “why are factories making more or less the same products for the same brand treating their workers so differently?”).

⁶ See, e.g., Steven Greenhouse, “Factory Defies Sweatshop Label, But Can It Thrive?” *New York Times* (Jul. 17, 2010) (describing Factory in Dominican Republic making ethically-produced apparel solely for U.S. college bookstores under a newly-introduced label).

Finally, due to market failures, most of the major Licensees, in the absence of the Program, likely will be unwilling or unable to make available to consumers Products that are credibly certified and labeled as having been made under ethical labor conditions.⁷ First, established sports apparel brands are unlikely to independently adopt such standards and labeling for their collegiate licensed apparel, as this would call into question why they have not implemented the same standards across their entire product line.⁸ Second, even if they were willing to do so, the major Licensees would face significant challenges convincing consumers, particularly, students, of the credibility of claims regarding ethical labor conditions due to the obvious conflicts of interest.⁹

Finally, with few exceptions,¹⁰ established Licensees are unlikely to voluntarily adopt standards developed by the WRC, an independent labor rights organization that regularly criticizes working conditions in Licensees' supplier factories. Thus, without the Program, participating Schools will be unable to adequately respond to the demand from students and other consumers for Products that have been credibly verified as having been produced under ethical labor conditions.

2. The WRC and Its Role

The WRC is a nonprofit New York corporation created in 2000 and governed by a Board of Directors with fifteen members.¹¹ Five of these members represent universities, five are labor rights experts selected from a WRC advisory

⁷ See, Keith E. Maskus, *Should Core Labor Standards Be Imposed Through International Trade Policy?* (Policy Research Working Paper No. 187) (World Bank, 1997) p. 47 (attributing lack of product labeling concerning labor standards to market failures).

⁸ See, discussion, *infra*, at 8.

⁹ See, *id.*

¹⁰ See, Greenhouse, *supra*, at n. 6 (discussing implementation of WRC living wage standard at Factory in Dominican Republic).

¹¹ WRC Bylaws, §§ 2.1 and 2.2, available at: http://workersrights.org/about/wrc_bylaws.asp.

council, and five are from USAS.¹² There is no labor representative on the Board from a union with substantial involvement in the apparel industry.¹³

One of the corporate purposes of the WRC is “to codify and promote compliance with ethical standards of conduct by college and university licensors, and by manufacturers who use the indicia of those universities and colleges, including but not limited to standards for living wages, child labor, women’s rights, the right to organize and bargain collectively, and health and safety....”¹⁴

The WRC’s role in the Schools’ licensing processes differs from that of the CLC and LRG. The CLC and LRG have been responsible for creating and enforcing the “traditional” licensing terms (royalties, trademark usage and infringement, etc.), while the WRC and the FLA have focused on enforcing the special “labor” conditions that the participating universities have required of Factories via the licensing process.

The WRC is central to the operation of the proposed Program, as explained in Part 6 below. However, the WRC, unlike the CLC and LRG, has no contractual role in the licensing programs and, unlike a Licensee, has no contractual relationship with any Factory producing goods under the Program. Rather, the WRC serves as an advisor to the Schools, while each School retains independent authority to decide whether or not to (i) participate in the Program; (ii) include the Model Licensing Terms in its agreements with Licensees; and/or (iii) enforce these terms vis-à-vis any Licensee.

Under the Program, in the event of a dispute between (i) a School and its Licensee, or (ii) a Licensee and a Factory, the WRC might well be called upon to explain the WRC’s determination of whether a Factory qualifies for inclusion in the Designated Suppliers List (“DSL”) of Factories whose conditions comply with

¹² The current members of the WRC Board of Directors are: (1) *five representatives of the University Caucus*: Jim Wilkerson, Duke University; Dawn Crim, University of Wisconsin-Madison; Mike Powers, Cornell University; Marybeth Schmutz, Rutgers University; open seat; (2) *five independent labor rights experts representing the WRC Advisory Council*: Ana Avendaño, Assistant to the President and Director of Immigration and Community Action, AFL-CIO; Jill Esbenshade, Associate Professor of Sociology, San Diego State University (*Board Secretary*); Jeff Hermanson, Assistant Executive Director, Writers Guild of America, West; Julie Martinez Ortega, Vice President for Policy & Advocacy and Director, PowerPAC; Katie Quan, Director, John F. Henning Center for International Labor Relations, University of California, Berkeley; and (3) *five representatives of United Students Against Sweatshops (“USAS”)*: Morgan Currier (*Treasurer*), University of Washington – Seattle; Mary Yanik, Yale University; Ian Trupin, Brown University; Cristina Lor, University of Wisconsin – Madison; Richard Garzon, Rutgers University. The position of Board Chair is currently open due to the untimely passing of longtime WRC board member LaMarr Billups of Georgetown University, who died on November 11, 2011.

¹³ USAS, which has five WRC Board representatives, does receive funding from several unions. While the student representatives on the WRC Board clearly are anxious to see “livable wage” standards, we have found no evidence that their positions are dictated by the USAS funders, as opposed to the Directors’ own beliefs. Stated alternatively, there is simply no evidence of a direct causal link between any union and any particular feature of the DSP.

¹⁴ WRC Bylaws, § 1.3(c).

the 'Factory Standards,' or its finding of violations of these standards at a Factory, and could recommend steps needed to remedy the latter. The WRC would leave the actual resolution of the dispute, however, to the particular School involved, its Licensee(s) and/or the Factory.

3. The Central Features of the Designated Suppliers Program

The Program differs from its predecessors described in Part 2 above, in part, because it provides an *ex ante* approach to the improvement of labor conditions, rather than a reactive one after violations have already occurred.¹⁵ In particular, the Program enables an individual School to require Licensees to manufacture Products licensed by that School in factories where workers are paid "a living wage," where university codes of conduct are completely complied with, and where the rights of freedom of association and collective bargaining are fully-respected. This feature makes possible a second distinctive element of the Program, the ability to credibly demonstrate to students and other consumers that a specific Product was made under ethical labor conditions.

The Program also differs from its predecessors in addressing the vital issue of how to make these improvements in labor conditions economically sustainable for the Factories involved. To this end, under the Proposed Licensing Terms, a School can require a Licensee to comply with the "Fair Price," "Procurement Quota," and "Length of Stay" requirements described below in Section 3.b.

a. Factory Standards

The Proposed Licensing Terms would require that Factories have been designated in advance by Licensees as proposed manufacturing sites for the Products. After a Factory has been so designated by a Licensee, the WRC would verify the Factory and the Licensee's compliance with the following standards: A Licensee that agreed to the Proposed Licensing Terms would be required to demonstrate to the licensor School that it has entered into agreements with each Factory producing Products covered by the license that: (i) require compliance with all labor standards established in the licensor School's code of conduct; (ii) mandate payment of a country-specific "living wage;" and (iii) guarantee respect for workers' rights to freedom of association and collective bargaining.¹⁶

¹⁵ While precertification of qualified Factories is a new activity for WRC, some major brands have required precertification of factories as part of their voluntary labor rights code of conduct and compliance programs. Under such programs, the brand's sourcing staff can only select factories that have passed an inspection by the brand's labor rights compliance staff.

¹⁶ In the case of a Licensee that owns and/or operates the Factor(ies) where the Products are to be manufactured under the agreement, the Licensee would have to agree to the WRC's verification that its Factor(ies) complied with the Factory Standards as a condition of the license.

In substance, the Factory Standards would require the following:

i. Compliance with University Codes of Conduct

The contract would have to require that the Factory achieve within six months' time and, thereafter, maintain compliance with the labor codes of conduct of those participating Schools whose licensed Products the Factory will produce for the Licensee. Although these codes of conduct have been adopted individually by Schools, they are generally consistent in their requirements, to which nearly all Licensees already have agreed in their existing licensing agreements.¹⁷

ii. Living Wage Requirement

The agreement between the Licensee and the Factory would have to ensure that a "fair price"¹⁸ is paid to the Factory by the Licensee such that the Factory can pay its employees a "living wage" and that such a wage is actually paid to the Factory's employees. The living wage applicable at a particular Factory will be determined according to a market basket study and/or other research conducted by the WRC concerning the cost of living in the locality where the Factory's workers reside. The WRC has already conducted such studies in several garment producing countries.¹⁹ The ultimate decision whether to take action against a Licensee, in the event that the Licensee fails to source its goods from factories where the "living wage" is being paid, will remain with the individual University Licensor.

iii. Freedom of Association and Collective Bargaining Requirement

The Factory Standards' requirements as to freedom of association and collective bargaining will be determined by the WRC in consultation with USAS and the participating Schools. Consistent with current best practices in the

¹⁷ Existing university codes of conduct for licensed apparel typically require that Licensees ensure that they and their suppliers adhere to the following standards: (1) Compliance with the domestic labor laws of the country of manufacture; (2) Payment of the legal minimum wage or prevailing industry wage of the country of manufacture, whichever is higher; (3) Restriction of mandatory overtime to the lesser of twelve hours per week or the legal weekly limit in the country of manufacture; (4) No use of child labor or forced labor; (5) Provision of a safe and healthy workplace; (6) No discrimination on the basis of gender, race, religion, age, disability or pregnancy, sexual orientation, nationality, political opinion, or social or ethnic origin; (7) No verbal, physical or sexual abuse; (8) Respect for freedom of association and collective bargaining; (9) Provision of maternity leave and accommodation of pregnant workers; (10) Protection from risks to reproductive health; and (11) Disclosure of supplier factory locations. See, e.g., CLC, *Special Agreement Regarding Labor Codes of Conduct* (2003) ("CLC Special Agreement") (detailing provisions of codes adopted by CLC's client Schools and delineating points of variation), http://licensing.wisc.edu/CLC_UW_Code_of_Conduct.pdf.

¹⁸ The "fair price" requirement is discussed, *infra*, at 9.

¹⁹ See, e.g., WRC, *Living Wage Analysis for the Dominican Republic* (2009), <http://www.workersrights.org/linkedddocs/WRC%20Living%20Wage%20Analysis%20for%20the%20Dominican%20Republic.pdf>.

collegiate licensed apparel sector,²⁰ these could include requirements that Licensees and Factories commit to comply with the terms of agreements on implementing these rights that are negotiated by the Licensee and bona fide labor organization(s) representing apparel workers in the country(ies) where the Factories manufacturing its Products are located.²¹ These additionally could include a requirement that these Factories' employees be represented by a bona fide labor organization.

b. Selection of Licensees

Each participating School will negotiate with Licensees the inclusion of the Proposed Licensing Terms in its licensing agreements completely independently of any other School. As previously noted, each School that is affiliated with the WRC incorporated its existing labor code of conduct into its current licensing agreements with Licensees independently of other Schools.²² There is, therefore, ample precedent for Schools dealing with their respective Licensees on this issue without collaborating among themselves.

c. Selection and Designation of Factories

The selection and designation of Factories will work as follows: After a participating licensor School and a Licensee execute a licensing agreement that includes the Proposed Licensing Terms, the Licensee would independently select factor(ies) that it wishes to manufacture Products covered by the agreement. The WRC would consult with the Licensee, the Factory and any bona fide labor organization representing the Factory's workers to ensure that all parties were fully aware of their obligations under the DSP. The Licensee would work with the Factory and labor organizations to resolve any outstanding compliance issues; the WRC would assist with this process as requested.

At a time of the Licensee's and/or Factory's choosing, the WRC would conduct a full compliance assessment of the Factory, covering all standards in the participating Schools' codes of conduct and all other provisions of the DSP. Factories that are determined to be in compliance with all of these standards and provisions would be placed on the DSL.

Qualifying Factories ("DSL Factories") would be placed on the DSL, which would be maintained and published by the WRC. Reports detailing the WRC's compliance assessment of each DSL Factory and periodic updates thereof would

²⁰ See, Greenhouse, *supra*, at n. 6 (discussing Licensee's relationship with unionized factory in Dominican Republic); also, Greenhouse, "Labor Fight Ends in Win for Students, *New York Times* (Nov. 17, 2009) (discussing agreement between Licensee and union covering employees in Honduras); and, Greenhouse, "Nike Agrees to Help Laid-Off Workers in Honduras" (Jul. 26, 2010) (discussing agreement between union and Licensee covering employees of supplier factories).

²¹ See, Licensee Obligations, *infra*, at 9-10.

²² See, Compliance with University Codes of Conduct, *supra*, at 8.

be posted on a public website maintained by the WRC, which would be publicized to students and consumers at point of sale and through other media.

d. Licensee Obligations

Under the Proposed Licensing Terms, a Licensee would commit to (i) procure a certain percentage of the Products it purchases that bear the licensor School's name and insignia from DSL Factories (the "Procurement Quota Requirement"), (ii) pay DSL Factories a price for the School's licensed Products (the "Fair Price Requirement") that would be sufficient to assure that the Factory could pay its workers "a living wage" and meet the other Labor Conditions, (iii) have a production contract of at least three years' duration with each DSL Factory (the "Length of Stay Requirement") producing the School's Products for that Licensee, (iv) affix Products bearing the licensor School's logo that were procured from DSL Factories with a label visible at point-of-sale that contains information concerning the labor conditions under which it was made and the verification of these claims (the "Labeling Requirement"), and/or (v) negotiate an agreement with bona fide trade unions representing apparel workers in the countries where the Factories manufacturing its Products are located which addresses freedom of association and collective bargaining, in addition to the requirements already outlined above (i-iv) (the "Licensee Labor Agreement Requirement"). A Licensee would receive written notice of any alleged infringement of these terms and have the opportunity to offer contrary evidence to the WRC and relevant licensor Schools.

The Fair Price Requirement would be negotiated on a factory-by-factory basis between the Licensee and the Factory. Disputes over the Fair Price will be resolved through binding arbitration between the Licensee and the Factory. The arbitrator's decision will be binding on both parties. The WRC will have the right, under the Proposed Licensing Terms, to observe the proceedings and provide input to the arbitrator, but will not have decision-making power. The WRC expects that individual Licensees will work with individual Factories to improve productivity in order to achieve reductions in per unit labor costs that substantially mitigate the impact of the higher labor costs resulting from the Living Wage Requirement in the Factory Standards.

The Procurement Quota, Fair Price, and Length of Stay Requirements are entirely new. These terms are designed to ensure that DSL Factories are financially capable of complying with the applicable labor standards, including the obligation to pay a "living wage." Each licensor School's use of the Proposed Licensing Terms would, incrementally, help accomplish this goal: Because, there is little to no overlap among consumers for each School's respective licensed apparel, and because a Factory typically can manufacture apparel bearing the names and insignia of multiple Schools, each School's independent use of Proposed Licensing Terms would be likely to result in a sustained aggregate increase in orders for Products manufactured in DSL Factories. This would, in

turn, help ensure the commitment of the DSL Factories to sustain improved conditions for their workers and maximize resulting potential efficiency gains.

The Labeling Requirement will ensure that students and other consumers will be informed that Products manufactured in DSL Factories have been produced under ethical working conditions. Under the Proposed Licensing Terms, a participating School would require that a Licensee affix to such Products a label communicating this information and identifying the specific DSL Factory where the Product was manufactured. Such a label could be issued by a bona fide labor organization that represents the Factory's employees.

As previously noted, the WRC would maintain a public website with reports detailing the WRC's compliance assessment of each DSL Factory and periodic updates through which students and consumers could verify the information on the labels. The WRC expects that many Licensees, Schools and retailers carrying Products made in DSL Factories would independently promote their distinctive characteristics.²³

The Licensee Labor Agreement Requirement would require the Licensee to be party to an agreement with trade unions representing apparel workers in the countries where the Factories manufacturing its Products are located. Consistent with current best practices in the collegiate licensed apparel sector, such agreements would provide for recognition of, and collective bargaining with, unions that represent workers employed directly by the Licensee or its supplier Factor(ies), guarantee freedom of association in non-unionized facilities that manufacture the Products for the Licensee, and address compensation, hiring, job security and other labor issues in Licensees' supplier factories.²⁴

4. Market Impact

The purpose of the Program is to enable Schools to make available a wide range of Products bearing their names and insignia that are verified to have been manufactured under ethical labor conditions. The WRC expects that any effect on retail prices as a result of the Program will be restricted to Products made in DSL factories, and will reflect the overall impact on factory costs associated with implementing these conditions.

In other words, the WRC does not anticipate that the creation of the Proposed Licensing Terms, which is the only form of collaboration *among Schools* envisioned under the Program, will have any effect on prices for Products which are *not* produced in DSL factories. All manufacture of Products *in* DSL factories will be as a result of independent decisions by individual Schools

²³ See, e.g., Greenhouse, *supra*, n. 8 (noting efforts of a major retailer to promote sale of Products based on ethical labor conditions at Factory in Dominican Republic).

²⁴ For examples of such agreements, see, Greenhouse, *supra*, n. 19.

to request inclusion of the Proposed Licensing Terms in agreements with their respective Licensees.

Accordingly, the WRC estimates that the creation of the Proposed Licensing Terms will have a positive or neutral impact on overall sales of the Products. As discussed below, we anticipate that the availability of a wide range of Products made under ethical labor conditions will result in increased purchases of Products by students and other consumers.

Whether or not the Program will result in increased sales of Products licensed by an *individual School*; however, will be determined by independent decisions and factors related to that School's own licensed apparel business. Key factors would include a School's ability and/or willingness to secure the inclusion of the Proposed Licensing Terms in its own agreements with Licensees, and the degree of preference among students and other consumers of that School's Products for ethically manufactured apparel.

a. Impact on Production Costs

The overall impact on factory costs of implementing the Proposed Licensing Terms and any ensuing effect on retail prices for Products made in DSL Factories will depend on multiple factors. The WRC expects that the most significant cost impact for a Factory will result from implementation of the Living Wage Requirement.

Based on previous research, the WRC anticipates that the Living Wage applicable to overseas workers in a given DSL Factory will be on average, three times the prevailing wages paid by comparable Factories in the same locale.²⁵ Consistent with representations made to the Department by the Apparel Industry Partnership ("AIP," a predecessor to the FLA) in connection with Business Review letters in 2000, the WRC does not anticipate an appreciable impact on U.S. retail prices for Products made in DSL Factories from the latter implementing the other DSP Factory Standards.²⁶

The WRC also expects that DSL Factories and Licensees will be able to substantially offset the impact of the Living Wage Requirement on overall factory costs by realizing efficiency gains made possible by raising wages and implementing the other DSP Factory Standards. Available evidence suggests

²⁵ See, e.g., WRC, *Living Wage Analysis for the Dominican Republic* (2010), <http://workersrights.org/linkedddocs/WRC%20Living%20Wage%20Analysis%20for%20the%20Dominican%20Republic.pdf>. The WRC has conducted similar analyses in Bangladesh, El Salvador, Haiti, Indonesia and Sri Lanka.

²⁶ See, Letter dated April 7, 2000 from Assistant Attorney General Joel I. Klein to Kenneth A. Letzer and Richard M. Lucas ("AIP Business Review Letter") (citing requestor's assertion that "it is extremely unlikely that widespread utilization of the [AIP] workplace code would have an appreciable impact on the prices or output of apparel and footwear products sold in the United States").

that higher wages combined with worker representation tends to result in increased productivity from not only reduced turnover and competitive advantages in hiring the most skilled and reliable workers, but also more effective implementation of advanced production methods requiring worker skill, buy-in and collaboration.²⁷ The adoption of the latter, in tandem with improved working conditions, has been linked, in turn, to efficiency gains from more effective collaboration between Factories and apparel buyers.²⁸ The WRC anticipates that the potential productivity gains are quite considerable.²⁹

b. Impact on U.S. Retail Prices

Even without taking into account the cost-minimizing effect of improved efficiencies described above, the WRC anticipates the retail price differential for Products made in DSL Factories as a result of these Factories implementing the Factory Standards would still be quite moderate – on the order of 1-6%. The reasoning behind this estimate is explained in a 2005 WRC Study, which noted that,

“While estimates vary by product and location of production, it is clear from information supplied by apparel industry sources, and from published academic research, that labor costs represent a very small portion of retail price: typically 1-3% for a garment sewn in the developing world. Thus

²⁷ See, e.g., Barton H. Hamilton, Jack A. Nickerson, and Hideo Owan, “Team Incentives and Worker Heterogeneity: An Empirical Analysis of the Impact of Teams on Productivity and Participation,” 111 *Journal of Political Economy* 495 (2003) (discussing productivity increases from introduction of modular production in unionized apparel factory, and citing other studies showing that such gains are better realized when combined other high-performance workplace practices); and Sandra E. Black and Lisa M. Lynch, “How to Compete: The Impact of Workplace Practices and Information Technology on Productivity,” 83 *Review of Economics and Statistics* 434-435 (2001) (finding higher productivity in unionized factories that have adopted high-performance workplace practices than in similarly-situated nonunionized workplaces).

²⁸ See, Richard Locke and Monica Romis, “Improving Working Conditions in a Global Supply Chain,” 48 *MIT Sloan Management Review* 56-60 (2007) (comparing labor rights compliance, production methods, and buyer relationship at two Nike suppliers in Mexico); also, Locke, Thomas Kochan, Romis and Fei Qin, “Beyond Corporate Codes of Conduct: Work Organization and Labour Standards at Nike’s Suppliers,” 146 *International Labor Review* 32-33 (discussing same research and noting higher wages but much lower per unit labor costs at the factory with superior working conditions, high performance workplace practices and collaborative relationship with Nike).

²⁹ See, id.; also, Daniel Luria, “Why Markets Tolerate Mediocre Manufacturing,” *Challenge* 13 (Jul.-Aug. 1996) (analyzing data from 3,000 U.S. manufacturers and noting that “in every industry the productivity level achieved by the most productive 10 percent of shops is at least 160 percent of the industry median”); and, Zaid Bakht, Md. Salimullah, Tatsufumi Yamagata, and Mohammad Yunus, *Competitiveness of the Knitwear Industry in Bangladesh: A Study of Industrial Development amid Global Competition* 10 (Inst. of Developing Economies, 2008) (noting much higher variability in technical efficiency among garment factories in developing countries than among those in OECD member states).

large increases in labor costs do not require correspondingly large increases in retail prices.³⁰

These findings are consistent with the representations made to the Department by the Fair Factories Clearinghouse ("FFC") and the AIP in connection with Business Review letters issued by the Department in 2000 and 2006.³¹

Any actual retail price differential for a Product made in a DSL Factory versus a Product made under otherwise prevailing Factory conditions will depend on, in addition to Factory labor costs, (a) whether or not higher prices paid to DSL Factories will be absorbed, passed on, or marked-up by Licensees and retailers,³² and (b) what proportion of a given DSL Factory's overall production will be represented by the Products, since the lower the proportion, the greater the price increase that will be necessary to achieve the labor standards.

The Labeling Requirement ensures that a consumer who might be paying modestly higher prices for DSP-licensed products would be informed of the garment's ethical production before completing a purchase. The Labeling Requirement thereby should increase demand for Products manufactured in DSL Factories among consumers who are more motivated by preference for ethically-produced garments than they are dissuaded from making such a purchase by a slightly higher price.

c. Impact on U.S. Retail Sales

The WRC anticipates that the availability, as a result of Program's Proposed Licensing Terms, of a wide range of Products made in DSL Factories, that are identified as such to students and other consumers at point of sale and through other media, should increase overall sales of the Products. Survey research consistently has shown that consumers want and are willing to pay a significant premium for apparel and other goods that have been ethically-

³⁰ See, Worker Rights Consortium, *The Impact of Substantial Labor Cost Increases on Apparel Retail Prices* (November 10, 2005) (study attached).

³¹ See, Letter dated June 19, 2006 from Assistant Attorney General Thomas O. Barnett to Robert M. Langer et al ("FFC Business Review Letter") p. 3 (quoting the applicant as representing that "labor typically accounts for less than 3% of the United States retail price of clothing made in domestic factories and as little as 0.5% for garment sewn abroad."). In 2000, the Apparel Industry Partnership (a predecessor to the FLA) apparently made a virtually identical representation to the Department which is reflected in the business review letter dated April 7, 2000 from Assistant Attorney General Joel I. Klein to Kenneth A. Letzer and Richard M. Lucas ("AIP Business Review Letter") p. 4 (quoting the applicant's assertion that "labor typically accounts for less than 3% of United States retail price of clothing made in domestic sweatshops and as little as 0.5% for garments sewn abroad").

³² The WRC's estimates assume these costs will be passed on by Licensees and retailers, albeit without markup. Some evidence, however, suggests that these costs may be absorbed at the wholesale level by Licensees. See, Greenhouse, *supra*, n. 8 (noting buyer's decision to absorb additional costs resulting from production of apparel at a Factory in Dominican Republic paying a "living wage" derived from WRC market-basket research).

produced.³³ Students and other consumers who favor such apparel disfavor Products that are not made under ethical working conditions, and are willing to pay such *premia*, will increase their overall expenditures on the Products once the Program has been implemented.

Whether or not, the Program will increase sales of Products licensed by a given participating School will depend on how that School decides to implement the Program. Each School will decide independently with which Licensees, or classes of Licensees, it will seek to negotiate incorporation of the Proposed Licensing Terms into its licensing agreements. Moreover, the extent to which the Proposed Licensing Terms actually are incorporated will be dependent on the outcome of negotiations between each School and each of its respective Licensees.

Finally, whether or not incorporation of the Proposed Licensing Terms in some or all of a School's licensing agreements will have a positive, neutral or negative impact on overall demand for a School's licensed Products also will depend on: (a) demand for such Products that are verified as made under ethical working conditions versus equivalent Products that are not; (b) the extent to which Licensees and retailers of that School's Products absorb, pass on or mark-up any higher costs associated with their production in DSL Factories; and (c) the price elasticity of demand for the School's Products, which may vary greatly from School to School.

The WRC anticipates that individual Schools will decide how to implement the DSP in a manner similar to how they have made previous decisions concerning the incorporation of labor standards into their apparel licenses. Therefore, Schools' institutional values and/or religious affiliation(s), campus politics (i.e., breadth and depth of student support for the Program), administrative concerns (ease or difficulty of implementation), and business interests and relationships with Licensees (athletic sponsorships, etc.) all will play lesser or greater roles depending on the School in question.

5. The Role of the Schools

Most Schools license the rights to produce and sell their respective Products on a non-exclusive basis at the same rate to all Licensees.³⁴ There are variations in royalty rates different Schools charge and very substantial variations

³³ See, e.g., Shareen Hertel, Lyle Scruggs, and Christian Heidkamp, *Ethical Consumption: Who Cares, Who Shops, and Why?* 6 (paper presented at the 2007 meeting of the Int'l Studies Ass'n) (Feb. 28, 2007) (reviewing academic literature and citing previously published studies in 1995, 1996, 2000, 2001 and a 2006 national public opinion survey all showing 75-85% of U.S. respondents reporting willingness to pay *premia* of 5-25% for apparel "produced without the use of sweatshop labor"), available at: http://www.allacademic.com/meta/p180072_index.html.

³⁴ There is at least one example of a School limiting the number of non-exclusive Licensees producing a particular licensed Product. There may be some example(s) of a Licensee being given exclusive rights to a new Product, but this would be highly unusual.

in dollar amounts of royalties they earn. The latter are based largely on the size of the institution and its prominence and success in major sports.

As noted, student demands that their Schools' Products be manufactured under ethical labor conditions have been the driving force behind the development of the Program and Schools' consideration of participation. Student protests about workers' rights have occurred on many campuses and are well documented in the press.³⁵ These protests apparently have served as catalysts spurring university actions in this area.³⁶

As noted, each School will decide (a) whether to participate in the Program by adopting the proposed Labor Standards and/or other Proposed Licensing Terms requirements in its licenses; (b) if so, how to implement the Program; and, (c) having done so, when to take enforcement action vis-à-vis a Licensee in the event of breaches of the Proposed Licensing Terms.

The Schools' ultimate interests in creation of the Proposed Licensing Terms are interdependent. For each participating School to be able to offer a wide range of Products made in DSL Factories bearing its name and insignia, a sufficient number of other Schools must be willing to include the Proposed Licensing Terms in their agreements with Licensees so that DSL Factories will receive sufficient orders to efficiently and sustainably produce the Products. Only by bringing to market a broad array of Products made in DSL Factories – by popular Licensee brands, in a variety of styles and categories, and at a wide range of price points – will Schools be able to fully capture student and other consumer demand for Products that are verifiably made under ethical working conditions.

6. The Role of the Licensees

The Products are ordered and purchased from Factories by the Licensees, who then resell them to retailers. These firms (Nike, adidas, etc) actively compete with each other in (i) determining what apparel to create bearing their own brands and the licensed names and insignia of the Schools and other licensors (e.g., professional sports organizations), and (ii) designing, manufacturing or purchasing, marketing and selling such garments. Licensees choose potential supplier Factories and negotiate production contracts with them for manufacture of licensed Products. A few large Licensees, who produce a high proportion of the apparel licensed by the Schools, are major publicly-traded corporations with a heavy investment in their own well-advertised brands. For such enterprises the "university logo" apparel segment covered by the Program will often be a relatively small part of their businesses. Meanwhile, there are

³⁵ See, e.g., Clanci Cochran, "U.C. Joins Effort Against Sweatshops," *Contra Costa Times* (May 9, 2006), http://www.workersrights.org/press/ContraCosta_UC-statement_5-9-06.pdf.

³⁶ See, id.

many smaller Licensees that are predominately committed to the "university" market segment.

While Licensees are competitors, they would not be required to collaborate with each other with regard to the terms on which they do business with any School(s) or Factories, even if two Licensees produce similar Products under nonexclusive licenses from the same School.³⁷ There is nothing in the Proposed Licensing Terms regarding coordination among Licensees with respect to multiple Factories or prices paid by Licensees to Factor(ies).

The Licensees have had no decisional role in setting the terms of the Program, although various Licensees have been consulted on the Program by the WRC and individual Schools. To the extent that they have expressed their views, Licensees have generally indicated that they were opposed conceptually³⁸ because of what they perceive as administrative and/or logistical burdens it would impose.

Licensees do, of course, belong to the FLA and have their own labor rights compliance programs. The Department of Justice has issued a favorable Business Review letter with respect to the FLA's predecessor organization, the AIP.³⁹ To the extent that Licensees have offered objections to the WRC's proposed Program, these may be motivated by the fact that, if individually implemented by Schools, the Licensees' obligations under the Proposed Licensing Terms would be significantly greater than under any other factory monitoring programs the Licensees may have created or in which they participate.

It is not entirely clear how various Licensees may respond to the Program. If a School adopted the Program, a Licensee might agree to include the Proposed Licensing Terms in its agreement because the School makes it a condition of the license's issuance, and/or because the Licensee foresees additional profit from offering ethically-manufactured Products bearing the School's name and insignia. Alternatively, the Licensee might decline to seek a

³⁷ Under the Program, the specific terms of any agreement between a Licensee and a Factory would not be made public or otherwise shared by WRC with other Licensees and Factories.

³⁸ For example, on October 31, 2005, in a public presentation at Georgetown University, Caitlin Morris, an employee of Nike, an important Licensee, responded to questions about the Program by telling the audience that Nike did not agree that apparel brands should increase the prices paid to their suppliers. She stated that Nike believes the United Students Against Sweatshops ("USAS") proposal for the Program is impractical and that its purpose is to save factories that are inefficient. Adidas, another major Licensee, also has publicly opposed the Program, questioning its sustainability and the WRC's authority to designate supplier factories. See, Andy Kroll, "Adidas Executive Defends Company's Labor Practices," *The Michigan Daily* (Nov. 28, 2007); <http://www.michigandaily.com/content/adidas-executive-defends-companys-labor-practices>.

³⁹ See, AIP Business Review Letter, *supra*, n. 23, (noting the AIP's representation that "the impetus for the Code was not typical of a cartel or other restrictive agreements, i.e., the desire of rivals to enhance profits by reducing competition, but rather was founded in 'concerns about public policy... and echoes by the human rights, labor, consumer, and religious communities'").

license from that School.⁴⁰ Some Licensees might choose to concentrate on marketing apparel licensed by Schools that were not participating in the Program and/or non-collegiate licensors.

7. Enforcement Mechanisms and Safeguards

The WRC is central to the monitoring of the labor-related obligations that will be the subject of agreements between an individual School and its Licensees under the Program. The WRC would inspect Factories and, based on the results, maintain a list of DSL Factories eligible to participate in the Program. The WRC also would perform ongoing monitoring of these Factories' compliance with the Factory Standards and the Licensees' compliance with their own obligations under the Proposed Licensing Terms. The WRC would report serious and/or persistent failure to meet these standards and obligations to relevant participating Schools.

Enforcement of the Fair Price requirement as well as any disputes between a Licensee and Factory regarding compliance with the Length of Stay Requirement will be addressed through binding arbitration, with the Licensee and Factory jointly selecting a neutral, third-party arbitrator. The WRC will observe the arbitration process and report results, including any failure by a Licensee or Factory to comply with an arbitrator's decision, to relevant participating Schools.

a. Selection of Licensees

Each participating School will be instructed by the WRC that it must negotiate with Licensees the inclusion of the Proposed Licensing Terms in licensing agreements completely independently, without collaboration with any other School.

b. Initial Designation of Factories

The process of designating the DSL Factories in advance is a new concept that would be the cornerstone for the new sourcing requirements of the Program. For a Factory to qualify, a Licensee purchasing Products manufactured there would have to demonstrate that the Factory complies with the Program's Factory Standards, including the requirements that the Factory's workers are paid a living wage and are able to make a free decision as to whether to join a trade union and bargain collectively.⁴¹ An initial phase-in period

⁴⁰ Clearly an agreement among Licensees to boycott Schools participating in the Program would be highly likely to constitute a violation of Section 1 of the Sherman Act, and it could even potentially be a criminal violation. Therefore, we assume that it would be unlikely to occur if the Licensees were well counseled.

⁴¹ The latter requirement could be satisfied by an agreement between the Licensee and bona fide labor organization(s) representing apparel workers in the country(ies) where the Factories manufacturing its Products are located that guarantees respect for these rights.

of at least six months would be allowed for a Licensee to bring its proposed DSL Factories into compliance with the Factory Standards.

As already noted, each Licensee would select candidate DSL Factories, without any prescreening. The Licensee would be free to choose any facility from which it intends to purchase Products covered by licenses that include the Proposed Licensing Terms which it believes can meet the Program's standards. The WRC would consult with each selected Factory to ensure that its management is fully aware of its obligations under the DSP. The Licensee would work with the Factory to address any outstanding compliance issues; the WRC would assist as requested. At the time of the Licensee's and/or Factory's choosing, but no later than six months into the Program's first year, the WRC would conduct a full compliance assessment, covering all code of conduct standards and provisions of the DSP. Inclusion on the DSL would be granted to the Factory if it is determined to be in compliance with the Factory Standards.

c. Monitoring Performance

The WRC would conduct ongoing monitoring of compliance with the Program by Licensees and Factories, based on complaints or information that it had gathered through its own proactive investigations. It would monitor the performance of DSL Factories and the performance of Licensees' relative to their Procurement Quota obligations to purchase a specified percentage of their Products from DSL Factories. If a violation of the Factory Standards were found at a Factory, the WRC would seek to have it corrected. But, if the infringement persisted, the Factory would ultimately be removed from the DSL and Licensees would be informed that they could no longer affix labels advertising verification of manufacture under ethical working conditions on Products from this Factory.

The WRC would then inform the Licensee(s) using the Factory, and the relevant School(s), that the Licensee could no longer count its purchases from that Factory toward fulfillment of its Procurement Quota obligations. (The Licensee and/or Factory would have the opportunity to appeal the WRC's findings to an independent panel or arbitrator, see "Procedural Safeguards" below.) If a Licensee does not purchase the percentage of its collegiate licensed apparel required by its agreement with a participating School from DSL factories, the WRC would report this violation to that School, which would determine itself whether action with regard to the Licensee were warranted.

Similarly, if the WRC were to receive a report from a third-party arbitrator indicating that the negotiated prices for Products from a particular Factory were below the proper Fair Price and the Licensee did not subsequently agree to pay the Fair Price prescribed by the arbitrator, the WRC would report this to any relevant participating School. Failure by a Licensee to implement an arbitrator's decisions would not result in the Factory's goods not counting toward the

Licensee's quota. Rather, the Licensee, in ignoring the arbitrator, would be committing a direct violation of one of its contractual obligations to the School(s). In other words, under the DSP, the Licensee's obligation to pay a fair price, to meet a procurement quota and to abide by an arbitrator's ruling will be separate, free-standing obligations, whose breach would expose the Licensee to any contractual remedies available to the School.

The enforcement mechanism detailed above is much more developed than the one currently employed by Schools to enforce their codes of conduct. Currently, individual Schools can terminate or suspend a Licensee's license simply based on findings by the WRC of code of conduct infringements.⁴² Under the DSP, the individual School will remain the key decision-maker and the WRC the key fact-finder.⁴³ However, the Proposed Licensing Terms will provide expanded procedures for prompt review of the WRC's findings, including appeal by the Licensee to an independent arbitrator or expert panel before a School would take action against the Licensee.

d. Procedural Safeguards

The processes by which the WRC would make its decisions regarding Factories' compliance with the Factory Standards and Licensees' compliance with their own obligations would be designed to give the affected parties clear notice and opportunities to be heard. Under the Program, the WRC would (i) give the affected Factory and Licensee a written statement of its findings of noncompliance, and (ii) give the affected Factory and Licensee an opportunity to respond to the WRC's findings and to have this response sent to the Schools when termination is considered.

During the initial certification of DSL Factories' compliance with the Factory Standards or any subsequent compliance assessment, a Factory would be asked for its input on the issues investigated by the WRC and its position on these issues would be recorded in the WRC's reports – though the WRC might indicate that it disagreed with the Factory and explain why. The same would be true for Licensees: a Licensee would have notice and opportunity to respond before the WRC reported any finding concerning that Licensee's compliance with the Proposed Licensing Terms or one of its supplier Factory's compliance with the Factory Standards. It is common for a School to communicate with its Licensees and in a number of past cases a Licensee has disputed WRC findings

⁴² Because most Licensees have been, to some degree, responsive to findings by the WRC of code of conduct infringements, such suspensions and terminations have been rare. For discussion of a prominent recent example of such actions, see, e.g., Steven Greenhouse, "Michigan is the Latest University to End a Licensing Deal with an Apparel Maker," *New York Times* (Feb. 23, 2009),

http://www.nytimes.com/2009/02/24/business/24sweat.html?_r=1&ref=business.

⁴³ WRC has considered the possibility of creating guidelines to assist Schools in making decisions about various potential infringement situations. If WRC were to take this course, each School would be free to make its own decision about whether to adopt or use the guidelines.

in direct and detailed communications to the licensing School.⁴⁴ It is not common for a supplier Factory to communicate directly with a School whose Products it is producing, though there is nothing to stop any Factory from initiating such communication. The WRC always solicits input from relevant Factor(ies) and Licensee(s) before reporting to Schools regarding code of conduct compliance issues, but it might report informally to a School that a compliance problem may exist before it has completed a full investigation or formally conveyed its findings to that School in the form of a public report.

Finally, Licensees and Factories may appeal a WRC decision regarding compliance with the Factory Standards or other Licensee obligations to an expert appeals panel. The panel will be comprised of independent labor rights experts, chosen through a multi-stakeholder process in which Licensees will participate. In order to successfully appeal a WRC decision, a Licensee will have to produce before the panel substantial evidence demonstrating that the WRC's decision was erroneous. Panel members will be free of any financial conflict of interest (i.e. they will be individuals who are not employed by an apparel brand, a factory, or a union, etc.).

8. Conclusion

In analyzing the Program, it is important to recognize the following competitive relationships and realities:

- Core Purpose. The DSP is a humanitarian political response by various Schools to meet the altruistic demand of students and some other consumers for ethically-produced garments bearing university logos.
- Product Identification. An important part of the Program is to publicly identify at point of sale and elsewhere Products produced under the Program (and conversely to deny such designation where Licensees or Factories have failed to meet the Program's standards for ethical garment production).
- Limited Collaboration. There is no horizontal agreement among Schools whether to accept or implement the Program. The WRC does not know how many Schools are likely to accept and implement the Program. Schools will make such decisions independently of each other.
- Interdependence. The individual Schools have a common interdependent interest in achieving productive efficiency in the

⁴⁴ See, e.g., Tom McDonald, "Shelton Keeps Contract Alive," *Daily Wildcat* (Apr. 16, 2009), <http://media.wildcat.arizona.edu/media/storage/paper997/news/2009/04/16/News/Shelton.Keeps.Contract.Intact-3713177.shtml>.

DSL Factories and making available to students and other consumers a wide range of Products efficiently made in these Factories that have been verified as produced under ethical working conditions.

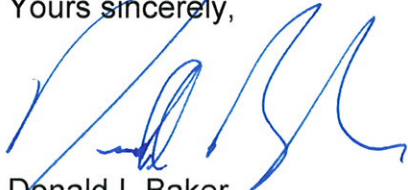
- Production Scale. Achieving this goal requires that enough Schools secure the adoption of the Proposed Licensing Terms in agreements with enough of their respective Licensees to make available such a range of Products and to generate demand for them such that reasonable production efficiency can be realized by Factories participating in the Program.
- Downstream Competition. Because of general use of non-exclusive licensing by Schools, there is substantial downstream product-market competition among Licensees offering Products associated with a major School including competition among Licensees offering Products made in DSL Factories.
- Non-participants in Designing the Program. (a) The Licensees (which can be competitors in designing, producing and selling one or more Schools' Products), have not had a decisional role in creating the Program; and (b) domestic U.S. garment worker unions—which might have an economic interest in Licensees having to pay higher prices for the Products—are not part of the Program, although they may have offered views at early stages of the creation of the Program, as did some Licensees.

We respectfully submit that implementation of the Proposed Licensing Terms by some or all of the Schools that are WRC members would not constitute an unreasonable restraint under Section 1 of the Sherman Act (15 U.S.C. § 1), even if the improved labor practices mandated in the Proposed Licensing Terms actually result in somewhat higher wholesale and consumer prices for Products made in DSL Factories. There is no unreasonable restraint because (i) any price *premia* for Products made in DSL Factories reflect their distinctive character as apparel verified, labeled and marketed as having been produced under ethical labor conditions, and (ii) any decision by a School and/or agreement between a School and one of its respective Licensees to include the Proposed Licensing Terms in a licensing agreement will be made independently of any other such decision or agreement by any other School or Licensee.

Moreover, Schools have a legitimate interdependent interest in bringing to market a wide range of, and creating a common standard and identifier for, Products that are ethically-manufactured. They also have a legitimate interest in seeing that Factories making their Products under ethical labor conditions realize compensating productivity gains. Finally, Schools do not compete with the Licensees or Factories that create and produce the Products. Accordingly, we

request that the Department issue a Business Review Letter pursuant to 28 CFR § 50.6 stating that its present enforcement intention is not to proceed against the Schools, the WRC, and the Licensees for implementing the Program described in this request.

Yours sincerely,



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