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October 29, 1996

VIA HAND DELIVERY

Honorable Joel I. Klein
Acting Assistant Attorney General
Antitrust Division
U.S. Department of Justice
10th Street & Constitution, N.W.
Washington, D.C. 20530

Re: Business Review Request for
Apparel Industry Partnership

Dear Mr. Klein:

We are requesting, on behalf of our client, the Lawyers Committee for Human Rights, and on behalf of the Apparel Industry Partnership (the "Partnership"), a business review letter as to the contemplated methods by which the Partnership will seek to respond to the request of President Clinton that they "develop options to inform consumers that the products they buy are not produced under . . . exploitative conditions."

FORMATION OF THE PARTNERSHIP

The Partnership arose out of a meeting convened by the President at the White House on August 2, 1996 with leaders from the apparel and footwear industries as well as from the labor, consumer and human rights communities.¹ The purpose of the meeting was to address widely

¹ The origin and composition of the Partnership as well as the impetus for its deliberations are significant for antitrust analysis because "knowledge of intent may help the [deciding body] to interpret facts and to predict consequences." Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918).

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publicized revelations that "some of the clothes and shoes [American consumers] buy are manufactured by people who work under deplorable conditions." In the President's words, "Our nation has always stood for human dignity and the fundamental rights of working people. We believe everyone should work, but no one should have to put their lives or health in jeopardy to put food on the table for their families."

President Clinton thus challenged the invited group of industry, labor, consumer and human rights leaders "to produce tough criteria to make sure that sweat shops are not used and to make sure consumers know it." The full text of President Clinton's remarks in the Rose Garden immediately following that meeting are attached as Appendix A to this letter. (Attached as Appendix B are recent representative press releases issued by Secretary of Labor Robert Reich concerning the manufacture of apparel and footwear under deplorable working conditions.)

Following the August 2nd White House meeting, and in response to the President's challenge, the industry, labor, consumer and human rights participants in the White House meeting formed an informal "Apparel Industry Partnership"². The purpose of the Partnership is further to consider voluntary industry options for the development of fair and responsible labor standards for the manufacture of apparel and footwear. A list of Partnership members is attached as Appendix C to this letter.

COMPOSITION OF THE PARTNERSHIP

The Partnership consists of representatives from a broad cross-section of apparel and footwear companies along with labor, consumer and human rights organizations.

² "Apparel Industry Partnership" is the name that was given to the group by the White House. However, notwithstanding the use of the term "partnership", the group is not legally organized as a general or limited partnership, nor is it intended that the existence of the group will result in the creation of a partnership relationship between or among its participants.

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With the exception of Reebok International Ltd. ("Reebok") and NIKE, Inc. ("NIKE") in the athletic footwear business, the participants in the Partnership hold relatively minor shares in the multibillion dollar U.S. apparel industry. It is noteworthy that the composition of the Partnership primarily reflects those companies and organizations that were invited to attend the August White House meeting and is not the result of any industry self-selection.³ Moreover, given the prominent role played by consumer and human rights groups in the Partnership, it seems unlikely in the extreme that the Partnership could be regarded as a forum for the exchange of potentially anticompetitive information.

As we have discussed with your staff, the Partnership would like to add Reebok as a participant in its deliberations. Reebok was invited to the August White House meeting but did not attend. Reebok now desires to join in the Partnership's activities and to offer to the Partnership its expertise in the labor rights area and in the monitoring of working conditions. Reebok is a direct competitor of NIKE in the athletic footwear and apparel businesses.

PRO-COMPETITIVE OBJECTIVES OF THE PARTNERSHIP

The objectives of the Partnership are: (i) to articulate a common set of standards defining decent and humane working conditions and (ii) to recommend monitoring

³ The Department of Labor, which was instrumental in drawing up the invitation list for the White House meeting, has informed us that the list was intended to reflect a representative sample of interests from the apparel and footwear industries and from the labor, consumer and human rights communities. Since the Partnership's formation, three members have joined the group that were not invited to the August White House meeting: Business for Social Responsibility, the International Labor Rights Fund, and the Robert F. Kennedy Memorial Center for Human Rights. In addition, the Partnership is considering requesting the participation of at least one supplier to the apparel and/or footwear industries and at least one retailer for these industries.

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mechanisms to verify compliance with such standards and consumer education methods to inform consumers that apparel and footwear products offered for sale are produced in accordance with such standards. If the Partnership achieves these objectives, companies which adhere to the standards and utilize the recommended monitoring mechanisms will be able to communicate to consumers, on an objective and verifiable basis, that their products are produced without exploitative labor.

Recent studies have found that American consumers are concerned about the use of sweatshop conditions in the manufacture of apparel. These studies demonstrate that, in making purchasing decisions, consumers seek greater information about the working conditions under which products are produced. (A representative sample of such studies is attached hereto as Appendix D.) The Partnership seeks to respond to this concern of American consumers and to provide consumers with the choice that they desire. In fact, the existence of objective and verifiable standards defining decent and humane working conditions will be pro-competitive because they will permit competition on the basis of respect for workers rights, as well as on price, quality and other product attributes.

SPECIFIC ISSUES FOR PARTNERSHIP DISCUSSION

The Partnership intends to meet periodically, both in full sessions and in smaller working groups, to discuss and consider the following specific issues:

- ° The articulation of a comprehensive set of fair and responsible labor standards defining decent and humane working conditions (the "Labor Standards") which might address, inter alia, the following:

The use of child labor and forced labor;

Nondiscrimination in hiring, salary and benefits;

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Responsible health and safety practices;

The rights of freedom of association and collective bargaining;

Hours of work and utilization of overtime; and

The concept of a decent minimum wage;⁴

- ° Specific guidelines to monitor compliance with the Labor Standards in connection with apparel and footwear production both in the United States and elsewhere in the world;
- ° Mechanisms to verify compliance with the Labor Standards, such as the establishment of internal monitoring systems and/or the development of an outside monitoring mechanism by one or more third parties (such as auditing firms and/or labor groups);
- ° Methods to inform consumers that products that they purchase comply with the Labor Standards. Such methods might include labelling, point-of-purchase displays, advertising or other methods; and
- ° Incentives to encourage the adoption of the Labor Standards as well as the monitoring mechanisms and consumer education methods which may be adopted and endorsed by the Partnership.

⁴ The Partnership will not discuss specific wage levels that currently are being paid by any of its members or which any of its members might pay, or plan to pay, in the future.

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Once the Partnership has reached agreement on the Labor Standards, each Partnership member, along with other U.S. companies in the apparel and footwear industries, will have the unilateral right to determine whether to adhere to the Labor Standards in the production of some or all of its products and to utilize any monitoring mechanisms and consumer education methods recommended by the Partnership. In other words, adoption of the Labor Standards and acceptance of the Partnership's monitoring mechanisms and consumer education methods will be strictly voluntary. Although it is likely that the companies participating in the Partnership will adhere to the Labor Standards and utilize the recommended monitoring mechanisms and consumer education methods, none of the Partnership's proposed activities is intended to result in a boycott by the Partnership of, or concerted refusal by the Partnership to deal with, any person.

GUIDELINES FOR PARTNERSHIP DISCUSSIONS

A basic rule for all Partnership discussions will be that no company participant will seek, or disclose, competitively sensitive nonpublic information nor will any company participant disclose data from which such information might be derived. In this regard, given the diversity of apparel and footwear companies represented in the Partnership, and the manner in which members were selected, general discussions of decent and humane working conditions, e.g., the desirability of a particular age threshold for purposes of defining child labor, will not involve competitively sensitive nonpublic information or otherwise be problematic under the antitrust laws.⁵

⁵ Indeed, many apparel and footwear companies, including Partnership participants, already have published age thresholds for defining child labor as part of the internal codes of conduct respectively adopted by each of these companies. (Several representative codes of conduct of such Partnership participants are attached as Appendix E hereto.)

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Counsel for one or more participating Partnership members will attend all Partnership meetings. Such counsel will have among his or her duties to ensure that the group's discussions are limited to the topics described above and do not include any discussion of competitively sensitive nonpublic information.

While counsel will not necessarily participate in every working group meeting or phone conversation between Partnership members, clear guidelines will be promulgated as to the permissible scope of the Partnership's work. A written agenda will be circulated to Partnership members in advance of each Partnership meeting, and written minutes of each Partnership meeting will be circulated to members of the Partnership.

RESULTS OF PARTNERSHIP DISCUSSIONS

The Partnership intends to conclude its discussions by early February of 1997. Prior to that time it would present to the Antitrust Division, for further business review clearance, the Labor Standards defining decent and humane working conditions on which it has reached agreement and the monitoring mechanisms and consumer education methods which it has adopted to verify and communicate compliance with the Labor Standards. Assuming a favorable business review, the Partnership then would report to the public and to the President on its actions and issue recommendations to the apparel and footwear industries.

PROPRIETY OF DISCUSSIONS AND REQUEST FOR BUSINESS REVIEW

We believe that the Partnership, including both NIKE and Reebok, may lawfully meet to discharge the mandate given to it by the President consistent with the antitrust laws. (As noted above, the Labor Standards, monitoring mechanisms and consumer education methods that emerge as a result of such deliberations would be subject to a separate business review request before being forwarded to the President.) Thus, on behalf of the Partnership, we would like to request on an expedited

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basis that the Department of Justice provide the members of the Partnership with a business review letter, pursuant to 28 C.F.R. § 50.6, confirming that the Department has no antitrust enforcement intentions with respect to the planned discussions of the Partnership (including discussions in the Partnership between NIKE and Reebok). Early action is desirable since President Clinton has asked that the Partnership "report back to me within a maximum of six months about [its] progress."

The propriety of the Partnership's discussions is supported by Maple Flooring Manufacturers Ass'n v. United States, 268 U.S. 563, 586 (1925), where the Court concluded that trade associations that "gather and disseminate information" about costs, volume of production, prices charged in past transactions, etc. "without however reaching or attempting to reach any agreement or any concerted action with respect to prices or production or restraining competition, do not thereby engage in unlawful restraint of commerce."

Moreover, because of the breadth of interests represented in the Partnership and the presence in the Partnership of labor, consumer and human rights groups, this case is unlike United States v. Container Corp., 393 U.S. 333 (1969), where the exchange of information was among members of a highly concentrated industry producing a fungible product with inelastic demand. Neither the apparel nor the footwear industry is highly concentrated. Also, because of the diversity of the Partnership's membership, the Partnership's work of necessity will involve a degree of generality that would preclude specifics that might encourage the exchange of confidential information.

This case is also unlike Container Corp. in that the products are not fungible and demand is relatively elastic. Moreover, here, unlike Container Corp., there is a "controlling circumstance" in terms of responding to the public interest in taking action to address inhumane working conditions. 393 U.S. at 335.

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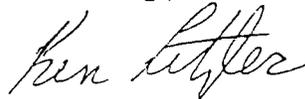
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* * *

We would be pleased to provide you with any further information that you may require. We appreciate your prompt attention to this matter.

With best regards.

Sincerely,



Kenneth A. Letzler



Lynda M. Clarizio

Attachments