TAUBER INSTITUTE FOR GLOBAL OPERATIONS

William Davidson Institute AT THE UNIVERSITY OF MICHIGAN

case 1-428-826
January 10, 2010

Russell Athletic Tries to Keep the Shirt on Its Back (A)

This is a toxic company…If the university is serious about encouraging human rights, then we could not keep Russell as a licensee.

Leigh Wedenoja, University of Michigan senior and member of the President's Advisory Committee on Labor Standards and Human Rights, as quoted in The New York Times[1]

On February 6, 2009, University of Michigan Professor Adrian Starr was sitting in a meeting of the University of Michigan's President's Advisory Committee on Labor Standards and Human Rights. On the table before him and the nine other committee members were stacks of reports and articles pertaining to the recent labor rights controversy surrounding Russell Athletic, one of the university's primary providers of collegiate athletic clothing. Russell had been a trustworthy and responsible supplier to the university for years, but the committee was very concerned about Russell's decision to close a manufacturing facility in Honduras, a move that had received severe condemnation from some labor rights groups.

The Russell Athletic senior vice president of human resources, Tony Pelaski, director of social compliance, Stan Blankenship, and senior vice president of licensed products, Matt Murphy, were on the phone with the committee. The committee members queried the Russell representatives regarding how they planned to remedy the labor rights debacle at the plant and another in Honduras. The executives closed the conversation by stating that Russell was fully committed to the process of remediation outlined by the Fair Labor Association (FLA) and indicated that they were developing a model that would emphasize freedom of association rights throughout the supply chain. They noted that a grievance policy, open door policy, and hotline to report any problems were already in place, but that they planned to step up managerial education and aimed for greater corporate social responsibility.[2]

After the conference call, the committee discussed whether or not it should recommend to the university that it terminate its contract with Russell Athletic. At that point, eleven schools had already severed their contracts with the company, including Duke University and Pennsylvania State University, and the committee knew that Michigan was seen as a leader in the steps it had taken toward responsible sourcing. Its decision could have cascading effects across the collegiate licensing industry, so it could not be taken lightly. Starr wondered about the complexity of issues that had led to the plant closing, what role he and the committee played in affecting change within such companies, and how he should cast his vote.

Published by GlobaLens, a division of the William Davidson Institute at the University of Michigan.

Would refusing to renew the Russell contract help the university committee further its ultimate goal of improving human rights and labor practices, or would it disable an otherwise high-quality supplier from continuing operations, thereby potentially putting more people out of work? If Russell's problems were endemic, should the university do more to partner with Russell, as a valued supplier, to help it change its operations? If the committee refused to renew the contract, how would it outline, communicate, and measure clear standards that Russell could abide by in order to be re-contracted as a supplier?

The Apparel Industry and the 2008 Recession

Starting in the 1980s, the United States apparel industry, including the manufacturing and retail players, was large, mature, and highly fragmented. Due to these factors, it was also extremely competitive, and companies were always looking for ways to cut costs. In this pursuit, US apparel and footwear manufacturers moved much of their production to lower-cost regions such as Mexico, the Caribbean, Central America, Asia, and sub-Saharan Africa. Mexico and Central America were attractive due to their close proximity to the US market, inexpensive labor, and border industrialization programs that offered manufacturers reduced taxes. In the 1990s trade agreements such as the North American Free Trade Agreement (NAFTA) and the Caribbean Basin Trade Partnership Act added to the benefits of producing in the region.

These offshoring moves caused concern regarding protecting US jobs and ensuring human rights and labor rights for workers in offshore locations. In the 1990s, nonprofit organizations targeted sports apparel leader Nike, exposing "sweatshop" conditions at many of its supplier factories. In response to these accusations, Nike and other apparel companies began to institute Corporate Social Responsibility commitments, employ increased monitoring policies, and form NGO alliances to prevent abuses and monitor and improve production practices. By 2008, the responsible sourcing issue had been addressed by most major apparel companies, but offshore production facilities were facing additional challenges due to slowing consumer spending in the US and European markets.

Between January and October 2008, US consumers spent \$137.5 billion on apparel, down 3.7% from the \$142.8 billion spent in the same period in 2007.[3] US retail sales fell each consecutive month from July through October 2008, as American consumers pulled back on spending at the fastest pace since records began in 1992. Between July and October 2008, the number of global suppliers serving the US market decreased by more than 70%.[4]

Collegiate Athletic Licensing

The apparel industry could be categorized in multiple ways, including by function (i.e. producer or retailer), target market (i.e. women, children, men), and by product type (i.e. footwear, sports apparel, intimate apparel). One large segment of the industry was licensed goods. Licensing a popular brand was a common means for apparel companies to extend product lines; manufacturers paid \$5.9 billion in licensing royalties in the US in 2005.[5] Collegiate licensed merchandise, which allowed licensees to use university and college names, logos, and sports mascots, represented approximately \$4.0 billion of that market.

Most universities had originally managed their own licensing. However, as the process became more complex for large universities and collegiate sports teams, a growing number of schools decided to outsource this function. The Collegiate Licensing Company (CLC), founded in 1981, quickly became the leading organization for managing contracts between universities and goods companies. The CLC was a mediator between universities and companies that were licensed to use university logos and brands, and it monitored and enforced the appropriate legal representation of universities. It negotiated licensing contracts on behalf of universities, and gave them a greater combined voice in the market. The University of Michigan had signed on to the CLC's services in 1981.

As of 2008, the CLC represented nearly 200 colleges, universities, bowl games, athletic conferences, The Heisman Trophy, and the NCAA (including the Men's and Women's Final Four, the College World Series, and all NCAA championships).

Russell Athletic

Russell Athletic was one of the most established brands in sporting goods. As of the late 1990s, Russell had three business segments: apparel, sports equipment, and athletic shoes. The company's brand names included American Athletic, Cross Creek, Huffy Sports, Jerzees, and Spalding. While popular with an older demographic, especially with fleece products, Russell was also intent on reaching the younger generation through branded apparel.

Russell had historically been a strong player, but its product lines had struggled in the past few years. In 2004, Russell had \$5.8 billion in revenue, of which \$27 million came from collegiate licensed goods.[6] In 2005, Russell posted a 28% decline in its full-year earnings and had \$1.43 billion in revenue. The company's stock price plummeted, and talks of restructuring ensued. One bright spot for the company was its collegiate licensed goods, which grew to \$28 million in 2005.[7]

In January 2006 Russell announced that it would lay off 2,200 employees, and in April 2006 the faltering company was purchased by Berkshire Hathaway, billionaire investor Warren Buffet's mammoth diversified conglomerate with businesses that ranged from utilities and insurance to apparel and services. Berkshire Hathaway bought Russell for \$600 million and put it under its Fruit of the Loom brand.

A few months after the purchase, Doug Kelly, a seasoned executive from the sporting goods industry, was brought in as president of Russell Athletic. Kelly began to restructure the organization. Russell, which then employed 4,239 workers, continued to be a vertically-integrated manufacturer and had fully-owned manufacturing operations in countries such as Mexico, El Salvador, and Honduras.

In 2006, the Russell and Spalding uniform and equipment groups were brought together to form a consolidated Team Sports Group. Kelly built and strengthened relationships with visible sporting leaders such as EA Sports, the NCAA college games and Arena Football. He saw the collegiate licensing business as "one of the largest growth opportunities for the company."[8] By 2007, Russell held around 37% of the team sports market.[9] For the 2007–2008 fiscal year, Russell Athletic ranked number nine in terms of overall sales of collegiate licensed goods, as shown in **Figure 1**.[10] By the spring of 2008, Russell's license business was up double-digits.

Figure 1

Top Collegiate Apparel Licensees (2007–2008)

1	Nike USA Inc.
2	Knights Apparel Inc.
3	Champion Custom Products
4	Top of the World
5	Adidas Team
6	Twins Enterprise Inc.
7	4004 Incorporated
8	Gear For Sports
9	**Russell Corporation**
10	Outerstuff LTD
11	Team Edition Apparel Inc.
12	Colosseum Athletics Corp.
13	JanSport Inc.
14	T-Shirt International Inc.
15	Haddad Apparel Group LTD

The University of Michigan's Collegiate Apparel

The University of Michigan (UofM) represented one of the world's most popular licensed brands. As shown in **Figure 2**, according to the Collegiate Licensing Company's rankings of over two hundred schools, UofM, with $5.5 million in 2007–2008 royalty revenue, ranked number two in terms of university sales of licensed goods.[11] In 2008, the University of Michigan's royalties from Russell apparel were $83,476. Royalties were typically 10% of the price the manufacturer charged the retailer, and nearly all of the dollars from UofM's royalties went to the athletic department.[12] Apparel sales historically generated the greatest royalties. In 2007–2008, more than $1 million of UofM's $5.5 million in revenue came from the sales of fleece items, and another $480,000 came from caps, hats, and other headgear.[13]

Figure 2

Top Universities Licensing Sales (2007–2008)

1	The University of Texas at Austin
2	**The University of Michigan**
3	The University of Florida
4	Louisiana State University
5	University of Notre Dame
6	University of North Carolina
7	University of Georgia
8	The University of Alabama
9	The Pennsylvania State University
10	University of Tennessee at Knoxville

Michigan worked with the Collegiate Licensing Company to manage contracts with more than 700 company licensees that were approved to produce thousands of official products bearing the university's name, logo, or representation.

University of Michigan's President's Advisory Committee on Labor Standards and Human Rights

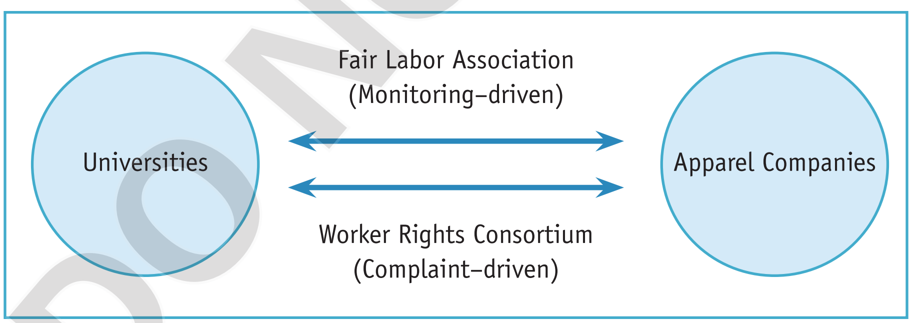
Over time, the University of Michigan had an increasing number of companies interested in licensing its brand, and it became concerned about potential labor and human rights abuses within these supplier organizations. Students were very concerned about their logos being used responsibly, and universities felt that they had a responsibility, and an opportunity, to improve labor rights through their purchasing power.

Therefore, in the fall of 2000, after pressure from students and labor rights organizations, UofM formally established The University of Michigan's President's Advisory Committee on Labor Standards and Human Rights, a group that was charged with providing advice on policies and procedures to address labor issues in the production of products with the University of Michigan's name, logo, or other symbols. The committee was comprised of students, faculty, and staff who served voluntarily.

When the committee was founded, it drafted its own code of conduct, but found it challenging to design effective monitoring procedures to enforce its standards. It therefore decided that instead of attempting to monitor its suppliers itself, it should affiliate with one or more external monitoring organizations to build off of their enforcement mechanisms. In early 2001, the university provisionally joined two nonprofit organizations, the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC).[14] Both organizations were just getting off the ground, and they worked under different philosophies. UofM paid each organization annual fees of about one percent of royalty fees, which at the time was about $30,000 each.[15] The university began to depend on the two organizations to be watchdogs for enforcing labor standards with its licensees, as shown in **Figure 3**. The FLA and WRC had different histories and approaches, but most committee members felt that they served complementary roles as mediators.

Figure 3

Monitoring Approaches in the Collegiate Apparel Industry



The Fair Labor Association (FLA)

The Fair Labor Association was founded in 1999 by leaders from the apparel industry, civil society, and the public sector who had come together under President Bill Clinton's Apparel Industry Partnership to address labor issues through voluntary industry standards. The goal of the FLA was to partner with leaders in the apparel industry and their customers, such as universities, in order to educate and create voluntary change within the apparel industry. Universities joined the FLA to ensure that licensed products bearing their names were produced under fair and decent working conditions.

While the FLA was not a certification body, it operated through enforcement of its Workplace Code of Conduct (shown in **Exhibit 1**) and ten company obligations. It required its corporate members, including collegiate licensees, to adopt the standards outlined in the code, and fulfill the company obligations, which included internal monitoring by company members. The association also accredited and commissioned external, independent auditors to monitor the operations of its member companies through unannounced visits. Its aim was to audit approximately 5% of its members' factories annually. These inspections were done on a random basis. The FLA also conducted an inspection if warranted by a third-party complaint investigation.

In August 2001 through July 2002, there were seven companies fully in the FLA as Participating Companies,[16] and in 2004 there were 15.[17] As of mid-June 2009, 30 companies were affiliated with the FLA as Participating Companies (some of which were also collegiate licensees), 33 as Category B Collegiate Licensees, 620 as Category C Collegiate Licensees, and almost 1,100 as Category D Collegiate Licensees.

Participating Companies were companies with over $50 million in total annual revenues that committed to bringing their entire supply chain into the FLA monitoring program and enforcing the FLA Workplace Code of Conduct. Category B Licensees were also companies with over $50 million in total annual revenues but they committed to bringing only the factories that produced licensed goods for FLA college or university affiliates under the FLA monitoring program. Category C Licensees were companies with total annual revenues between $5–50 million that manufactured collegiate products overseas, while Category D Licensees were companies with total annual revenues under $5 million that manufactured in the United States.

Across the spectrum of nonprofits operating in the labor rights sphere, the FLA was seen as a more cooperative, "good cop" model. When the University of Michigan had originally debated the pros and cons of existing organizations its committee noted that:[18]

a. The FLA membership included most of the largest apparel producers, was well-funded, could be cost effective in avoiding the proliferation of codes of conduct and monitoring, and could provide economies of scale in coordinating its membership and carrying out monitoring; and

b. The FLA focused on the apparel industry as a whole, and its charter gave universities the option to pursue more flexible strategies if so desired.

Despite these positive aspects, some members of the committee expressed concerns that the FLA might be too closely tied to corporate interests and too lax on enforcement.[19]

Fair Labor Association (FLA) and Russell Athletic

Russell joined the FLA as a Category B Collegiate Licensee in 2003, when the company was still publicly owned.[20] In 2004, Russell sold to 101 FLA-affiliated universities and produced its collegiate apparel at 20 factories. Russell Corporation's Social Compliance Program was based on its own code of conduct, which met or exceeded the FLA Workplace Code of Conduct.[21] Russell brought in third-party auditors to each of its facilities on an annual basis, and the FLA conducted two independent inspections between 2003 and 2006.

In 2005, Russell had 20 factories that were subject to FLA guidelines (USA–4, Mexico–2, El Salvador–2, Pakistan–2, Guyana–1, Honduras–1, Lesotho–1, Taiwan–1, Hong Kong–1, Brazil–1, Thailand–1, Swaziland–1, Turkmenistan–1, Kenya–1). The FLA conducted one external audit at a facility producing for Russell in Mexico in 2005.

In 2007, the FLA conducted one external audit at a facility in Pakistan that supplied to Russell and Nike Inc. The Pakistan audit found over 45 areas in which the facility failed to comply with FLA guidelines, including incorrect pay records, shifts of 16 to 24 hours, and health and safety hazards.[22] The Pakistan findings were actually not drastically worse than most reports of other audits in Pakistan. That same year the FLA found an average of 38 violations per factory in Pakistan, and an average of 19 violations per factory in the South Asia region.[23]

In 2007 the FLA board approved the affiliation of Russell Corporation as a Participating Company.[24] Therefore, Russell was taking on more of a commitment, and making an obligation to bring its entire supply chain, beyond collegiate apparel, into the FLA monitoring program.

Worker Rights Consortium

While the University of Michigan joined the FLA for its ability to work hand-in-hand with companies to monitor and improve processes, the committee also sought to join an organization that would act as more of an investigator and enforcer, and it therefore signed on with the Worker Rights Consortium (WRC).

The WRC was founded in 1999 by members of the activist group United Students Against Sweatshops. They were concerned that voluntary standards would never remedy the deep-rooted issues that led to human rights abuses, and they wanted to introduce an approach that would rally students and expose abuses through a complaint-driven model. Due to its relationship with the university community, the WRC was explicitly focused on the collegiate apparel industry. However, it did not partner or affiliate with any companies.

As of mid-2002, more than 100 schools had joined the WRC.[25] With regard to the WRC, the Michigan advisory committee cited numerous positive attributes of the organization.[26] Committee members thought that it had an "emphasis on transparency," an "emphasis on the investigation of complaints," and a "commitment to involve workers."[27] It also valued the fact that the WRC was concentrated on university-licensed apparel and was independent from the FLA, so it could provide a check on the quality and reliability of other monitoring efforts.

There were some concerns about working with the WRC, as it was seen as adopting a more adversarial approach. The committee noted that "licensees may view the WRC with suspicion" and that the WRC may influence workers, making independent investigations difficult. [28]

Between 2000 and 2008 the WRC achieved some success and credibility. It had about 175 affiliated colleges and universities. Its 2008 revenues were $1.3 million. Of this, 45% was from university affiliation fees, 44% from federal and foundation grants, and the remainder from other partners for whom the WRC carried out monitoring work. For a college or university that collected royalties from a licensing program, the annual fee for affiliation with the WRC was 1% of the previous year's gross licensing revenue (with a minimum of $1,500 and a maximum of $50,000).

Initial Struggles with Russell

The Michigan advisory committee's 2005 annual report stated that it "continued to benefit from its memberships in both the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC), two complementary organizations."[29]

In the history of the committee, it had cut only one contract. After it had terminated that contract, the company took some steps to remedy the situation and received approval from the FLA and WRC. Then, UofM re-established its contract with the supplier. Most universities had never cut a contract, but saw their role more as putting pressure on suppliers to change their practices.

In late 2007, problems began to emerge with Russell Athletic, one of UofM's apparel suppliers. Russell had a clean record and was one of the 24 apparel companies affiliated with the FLA. Russell had been licensing UofM apparel since 1983 and, as of 2008, supplied the school with $83,476 in royalties, from goods ranging from fleece jackets to T-shirts. From 1983 until 2007, UofM experienced no significant concerns with Russell's treatment of its workforce. In fact, it was generally thought of as one of its better suppliers from a human rights perspective.

In October 2007, Russell fired 145 workers at two plants in Honduras, Jerzees de Honduras and Jerzees Choloma. It seemed that the firings were correlated with workers' attempts to form a union, which would have violated Russell's code of conduct and Honduran law, which both provided for the right of workers to form and join unions of their choice, as well as to bargain collectively. The WRC conducted an investigation and concluded that a large number of those who were fired had been attempting to organize a union at the plants. Based on the complaints, the FLA also sponsored an investigation by independent third-party audit organization ALGI, a social accountability auditing firm that had been in business since 1989. ALGI also concluded that there had been unfair discrimination and dismissal of workers involved in the formation of a union.

After this report, the WRC began to pressure Russell Athletic to address the issue. When the efforts were unsuccessful, the WRC went to its large university base, and urged universities to suspend their contracts with Russell. After pressure from the university community, Russell then agreed to collaborate with the WRC and FLA on a remediation plan for the fired workers. Russell provided back pay estimated at a total of $150,000 and made rehiring offers to the workers it had dismissed.

In February 2008, the FLA again sent ALGI in to report on the progress at the Jerzees plants in Honduras. The unannounced visit found that Russell had fulfilled its commitments to the remediation plan. Russell had distributed a letter to all workers pledging to respect freedom of association and the right to collective bargaining and put in place non-discriminatory policies and procedures regarding hiring and termination at all factories. The company had also recognized unions at the two factories, Jerzees de Honduras and Jerzees Choloma.

It seemed that the FLA and WRC were pleased with the remediation plan's success. However, in April 2008, Russell made a decision to close the Choloma plant completely, letting go of 151 workers. The FLA and WRC seemed irked by this, as they had seen Choloma, one of the few unionized plants in Honduras, as a successful example of their intervention. Honduras, like much of Latin America, had a history of anti-union sentiments, which often led to threats, blacklisting, and violence against those who joined unions. However, Russell pointed to the economic downturn as its motivation to close the facility, and subsequently the WRC and FLA did not launch any investigations.

The WRC continued to monitor association activity at the remaining plant, Jerzees de Honduras (JDH), and closely followed the collective bargaining process at that plant, which began in July 2008. During this period, the WRC claimed that it received reports of hostility and threats toward the workers who were pushing for pay increases and union representation. In the union negotiations, the company's final offer regarding pay scale increases was a 16-cent-per-day pay raise over three years.[30]

After the Choloma closure, and throughout the negotiations at the JDH plant, Russell assured the WRC that it had no plans to close the JDH facility, but on October 8, 2008, days after an impasse with the union regarding a collective agreement at the JDH plant, supervisors announced that the facility would be shut down in the coming months.

The Jerzees de Honduras Closure

The JDH plant, which employed approximately 1,800 workers, was located in a free-trade zone in Honduras in a region where almost all factories produced apparel for the US market. The JDH facility manufactured fleece products, and Russell stated that the reasons for the plant closure were reduced demand for fleece and the fact that the JDH facility was a leased building with a flexible month-to-month leasing structure.

On October 16, Rick Medlin, an executive vice president at Fruit of the Loom, sent a memorandum to universities stating:

> ...We tried very hard to keep the JDH factory open. At the beginning of 2008 we had two sewing plants that were fleece only plants, Jerzees Campeche in Mexico and the JDH factory in Honduras. When it became apparent earlier this year that we had an excess of fleece sewing capacity, it was determined that Jerzees Campeche should be the plant that was closed, which was finalized in April of this year.
>
> ...At the time the decision was made, the presence of the union and status of the situation at the JDH factory, among other factors, was weighed in favor of keeping the JDH factory operating. Unfortunately demand for our fleece products continued to erode, which required a further balancing of our manufacturing capacity to customer demand. In this situation, taking into account all factors (including the union situation at Jerzees de Honduras), it was determined that the needed additional capacity reduction could only be accomplished by closing the JDH facility.[31]

The announcement came only days after an impasse at the JDH union's first attempt at establishing a collective bargaining agreement, and the WRC was not convinced of Russell's stated reasons for the closure.[32] Two days after Russell announced the closure, the WRC reported to universities that it felt that "the decision to close the facility was, at least in significant part, a product of ongoing animus by the company toward workers' exercise of their associational rights."[33] It referenced the 2007 incidents in Honduras, which it described as "mass firings of workers in retaliation for their efforts to unionize" and the closure of the Jerzees Choloma facility, Russell's only other unionized factory. It called for Russell to reverse its closure decision and reopen the facility, stating:

> It is also important to recognize that when animus towards the exercise of freedom of association is a factor in the decision to close a factory, this is a violation of workers' associational rights even if unrelated economic factors were also involved in the decision.[34]

While the university community, including the University of Michigan, was startled by this news, it also did not want to make any swift moves before an investigation had taken place. At its October 28 meeting, the University of Michigan advisory committee decided to send a letter to Russell informing the company that it was aware of the concerns being brought up by the WRC. UofM had a three-year contract with Russell, but it could terminate the contract by March of each year. The UofM committee discussed options, but decided not to make any moves before the WRC and FLA were able to complete their investigations.

WRC Investigations and Conclusions

Within weeks of the closure announcement, WRC auditors traveled to the JDH plant in Honduras, conducted interviews with 59 production workers, and reviewed numerous documents at the production site. The WRC investigation relied heavily on conversations with employees.

On November 7, 2008, the WRC published a 36-page public report stating that in the months leading up to the plant closure, managers and supervisors at the JDH facility made statements to workers such as, "This factory is going to close because of the union…The workers will starve because they got involved with a union" and "The plant has high efficiency, but unfortunately, because of the union, the factory may close."[35]

In addition, the WRC reported that according to JDH employees, upon the announcement of the plant's closure, supervisors and managers made statements alluding to the union's presence and pressure as being responsible for the ultimate decision. From the perspective of those who were interviewed, this seemed to be the logical reason for the plant's closure.

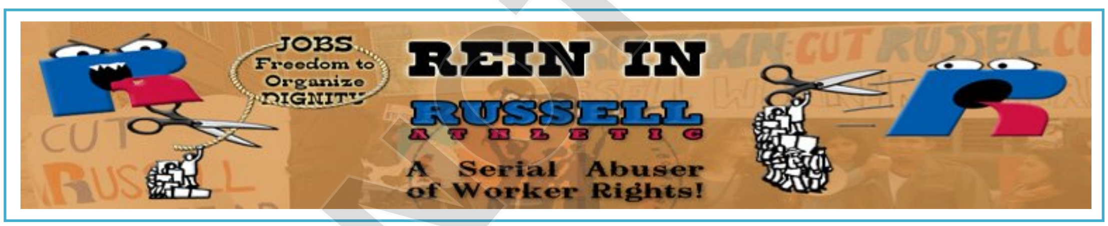
The WRC's report called for Russell to reopen the JDH facility and cease threats to employees regarding freedom of association. WRC called the Russell situation "one of the most serious challenges yet faced to the enforcement of university codes of conduct."[36]

Campuses and Labor Rights Groups Respond

The student organization United Students Against Sweatshops was swift in its response. It immediately launched a blog titled "Rein in Russell" and brought union organizers from the JDH plant on a speaking tour at universities across the US and Canada. The Rein in Russell blog read, "Stand in solidarity with Norma and her 1,800 co-workers that Russell left with nothing but industrial diseases, injuries, and death threats after cutting and running from their unionized factory."[37] The union members, Norma Estela Mejia Castellanos and Mirna Lizeth Chavarria Lopez, traveled to twelve schools in February 2009, including the University of Michigan, Rutgers University, Cornell University, Purdue University, and the Indiana University.

Figure 4

United Students Against Sweatshops Website



University of Michigan November and December Committee Meetings

The UofM advisory committee met in November and December, and the JDH issue was on the agenda at both meetings. The committee had received the WRC reports, but had not yet received anything from the FLA. With the limited information that members had at the time they decided that their only option was to wait. According to one committee member, "We were waiting for information on the investigations from the FLA which were ongoing. Our expectation was that Russell was cooperating with these investigations." While they knew that the FLA was conducting its own independent investigation, there had been some internal conflict with the results of what the investigation had found, and therefore the reports had been delayed.

FLA Investigations and Conlusions

The FLA took more time in its investigation to determine whether or not Russell violated the freedom of association code in its code of conduct, shown in **Figure 5**. It first hired an independent third-party investigator, the Cahn Group, to assess the rationale behind the closure of the JDH plant and render "an expert opinion on whether the decision was supported by legitimate business considerations."[38]

Figure 5

The FLA Freedom of Association Code, Benchmark Number 9, states:

Production Shift/Factory Closure to Prevent Exercise of Freedom of Association
Employers shall not (threaten to) shift production or close a factory in an attempt to prevent the formation of a union, in reaction to any legitimate exercise of the right to freedom of association and collective bargaining, including the right to strike, or in an effort to break up a union. If a factory is closing and is suspected of doing so to prevent or hamper the legitimate exercise of the right to freedom of association, the employer shall provide proof that can be assessed by a third party to determine the validity of these reasons given for closure.

In late October 2008, the Cahn Group conducted its work at Fruit of the Loom headquarters in Bowling Green, Kentucky, where it reviewed numerous internal documents and interviewed executives of Russell Athletic and its parent company, Fruit of the Loom. Russell told the Cahn Group that industry-wide, the fleece garment business had suffered a major downturn in 2008, with the most substantial downturn taking place in the 60–90 days leading up to the decision to close the JDH plant.[39] Statistics from the Collegiate Licensing Company substantiated this downturn, reporting that industry-wide quarterly fleece sales for collegiate licensed fleece products fell 33% from October 2007 to October 2008. Russell's fleece sales were forecasted to drop double digits in 2009, and the company said it also had a surplus of inventory. The company determined that it would not need sewing at the JDH plant for ten months.

Russell told the investigators that it owned 90% of its production capacity, so there was little room for adjusting production without closing a factory. All of its sewing for fleece products was located in four facilities in Honduras, as shown in **Figure 6**.

Figure 6
Russell's Factories in Honduras[40]

Name	Production	Facility
El Progreso	Briefs — high difficulty	Leased
Buena Vista	Crews	Owned
Jerzees de Honduras	Fleece — tops and basic pants	Leased (lease had expired and was extended on a month-to-month basis)
Tela	Fleece— zipper hooded jackets, shorts, pocketed pants	Leased (agreement until 2012)

From visiting Russell's headquarters and examining internal documents, the Cahn Group reported that, "on the relative merits of demand, product mix, factory efficiencies and workforce skills, the decision of the company appears rational but the evidence examined was not conclusive."[41] In regard to closing the JDH facility instead of other fleece plants in Honduras, Cahn concluded that, "A review of information provided by the company clearly substantiates the claim that it would be significantly less expensive to close Jerzees de Honduras."[42]

The Cahn report concluded that:

> The company is justified on the basis of the financial business case to close the Jerzees de Honduras facility based on significant, short-term cost savings. However, additional investigation in Honduras will be required to provide more complete conclusions concerning allegations made against the company.[43]

While this report shed light on the reasons for the plant closure, the FLA hired ALGI to conduct a separate simultaneous investigation aimed at understanding if there were issues of hostile behavior or anti-union threats at JDH. ALGI was the same organization that had done the 2007 investigations into the Russell union-affiliated personnel firings in Honduras.

ALGI went to Honduras in November and interviewed 77 workers, both union and non-union, as well as JDH's general manager, José Fernández, and director of human resources, Ricardo Trujillo. Interviews were done both onsite and offsite, and ALGI also reviewed internal documents from the JDH facility, including personnel files, payrolls, internal memos, the collective bargaining agreement, and company policies. Fruit of the Loom corporate senior vice president of human resources Tony Pelaski and corporate director of social compliance Stan Blankenship also went to Honduras for the investigation.

ALGI had a difficult time because different groups told conflicting stories. Due to this, it decided to rely primarily on "tangible records that would corroborate the events alleged by the union."[44] This included only registered claims regarding hostile behavior that were made against JDH at the Honduran Ministry of Labor.

The only complaint that ALGI could tie to anti-union behavior was regarding one employee who had collected signatures against the union. When the Ministry of Labor investigated the situation, the employee claimed that he had acted independently (without support or encouragement from management), and received a warning from the Ministry of Labor.

ALGI also reviewed minutes from monthly meetings between management and union representatives from the period April–October 2008. No issues of anti-union harassment were recorded, and the documents were signed by management and union members. ALGI stated, "The relationship between the union and JDH management during the monthly meetings they held beginning in April 2008 was respectful. A review of the meeting minutes corroborates that no complaints, accusations or problems between the two parties were registered."[45]

ALGI's report concluded that it "did not detect or gather any tangible evidence to show beyond a shadow of doubt that JDH has performed or encouraged actions that can be regarded as discriminatory or hostile against union delegates, the union federation or any union or non-union employees."[46] In its words, "It was only when Jerzees de Honduras management communicated that the facility was going to close down that the problems seemed to start."[47]

FLA Follow-up—The Goldin Investigation

Before the FLA released the results of the Cahn and ALGI reports, it received condemnation from some in the labor rights community, with ten labor rights organizations and the Honduran union federation challenging its approach and veracity. Critics said that the manner in which ALGI conducted its analysis, which involved basing its conclusion primarily on formal complaints and written documentation, did not value the worker's voice or the de facto environment. Their logic was that workers had been threatened and too scared to launch formal complaints to the Ministry of Labor, therefore the insignificant number of complaints was not an accurate reflection of the situation.

The FLA took these complaints seriously and, in early January of 2009, it hired an additional independent expert consultant, Adrian Goldin, to assess the methodology used by ALGI and re-examine the situation at JDH. Goldin was a law professor with years of experience with the International Labor Organization (ILO). He was highly regarded within the labor rights community.

Goldin spent four days in Honduras starting January 13, 2009. He interviewed government and union members, workers who were part of the negotiating team for the collective bargaining agreement, as well as JDH's general manager, José Fernández, and director of human resources, Ricardo Trujillo. Goldin's report said that the ALGI investigation suffered from methodological shortcomings in the manner in which it collected and evaluated worker testimony regarding threats of closure.[48]

According to Goldin, "it is highly improbable that certain types of conduct that could be deemed to violate freedom of association would be documented in tangible records."[49] He documented testimonies from workers that they had been asked by management to collect signatures against the union, that mid-level managers had warned workers that the factory would close because of union activity, and that union leaders were the subject of threats from non-union employees after the closure announcement.

These threats were aimed primarily at the union president, Moisés Montoya, and also against another leader, Elsa Salmerón. They were subjected to notes, signs, and verbal abuse regarding bomb and assassination threats. Although it did not seem that management was the source of these threats, the workers felt that the company was not doing enough to remedy the situation.

Goldin also emphasized Russell's recent history of violating freedom of association at the Choloma facility, as well as the temporal coincidence of the closing announcement and the union negotiations. He also followed up with workers who had tried to find subsequent work; they felt that no one would hire former JDH employees. The JDH managers attributed this to the general anti-union sentiment in Honduras, but said that they had done nothing to encourage this existing belief. In fact, they said that they "explained to our competitors that the closure is not because of the union, but because of business reasons."[50]

Goldin concluded, "with respect to the case investigated, the closure of the factory has been determined, at least to a significant extent, by the existence and activity of the union."[51]

Final Words from the FLA

Considering all of the independent investigations that it had sponsored, the FLA issued a concluding report on January 28, 2009, which stated, "Upon review of the three third-party reports and other information at our disposal, the FLA found the economic factors to be persuasive and accepts that the decision to close JDH was principally a business matter."[52] It stated that labor-management issues were "a complicating factor rather than a motivating factor in the closure of JDH."[53]

The FLA admitted that, "Allegations of violations of freedom of association are among the most difficult to investigate because they are often rooted in perceptions of the motive that moved an individual to take an action or behave in a particular way."[54]

It also reported that this closure was a huge letdown for the human rights community, in particular because:

> The closure of the factory means the disappearance of a unionized factory, moreover one in which a collective bargaining agreement was being negotiated. The closure of JDH, labor rights activists argue, not only destroys an incipient union organization but also has the possibility of impacting unionization in the region.[55]

The FLA concluded that the history in Honduras of anti-union animus by government officials and employers most likely led many workers (both pro- and anti-union), supervisors, and managers to assume that the establishment of the union at JDH would inevitably result in its closure. This assumption, in their eyes, had probably motivated employee and supervisor threats regarding union activity.

Russell's Response

On January 30, 2009, the JDH plant officially closed. But Russell Athletic faced challenges beyond the crisis in Honduras.

Russell's parent company, Berkshire Hathaway, issued the following in its 2008 annual report:

> During 2008, a series of crises occurred in the US financial and capital markets systems, as well as in the credit and housing markets. These conditions accelerated into an economic recession, as evidenced by declining consumer confidence, lower consumer spending, bankruptcies and significant job losses…Berkshire's operating companies have taken and will continue to take cost reduction actions in response to the current economic situation, including curtailing production, reducing capital expenditures, closing facilities and reducing employment to partially compensate for the declines in demand for goods and services.[56]

Retail sales continued to plummet, as shown in **Figure 7.**

Figure 7

Same-store Sales for January 2009

Source: Bustillo, Miguel, "Retailers Stop Making Sales Forecasts," The Wall Street Journal, Feb. 6, 2009

The day after the FLA published its conclusions, Russell Athletic announced that it would be closing its US headquarters in Atlanta, Georgia, and merging its administrative operations with its parent company, Fruit of the Loom. Gary Barfield, executive vice president of Russell Athletic-Spalding, said 2009 would "be a transition year for the company."[57]

The following day, on January 30, 2009, Russell sent a memo to college and university licensing representatives agreeing "to set out clearly its corporate position regarding freedom of association and improve the industrial relations climate in its factories in Honduras and elsewhere."

On February 16, 2009, it issued an independent report on its implementation of a Continuous Improvement Process in its corporate responsibility program, which it developed from recommendations from the FLA. In the report, Russell showed that it had communicated to employees regarding their rights of association, encouraged neighboring firms to hire the workers from JDH, and improved its employee grievance policy. The company's efforts could be tracked through a new independent website, www.russellsocialresponsibility.com.

Russell staunchly defended itself. On the front page of its website, Gary Barfield, Russell's executive vice president, signed a letter that stated: "As you may know, activists have targeted our company with a deliberate misinformation campaign regarding our operations in Honduras...We have had numerous discussions with customers all over the country and we know that many of you fully appreciate the dubious motives and tactics of these activists."

Russell stated that since the beginning of 2008 it had closed or was in the process of closing seven factories, of which only the Choloma and JDH factories were unionized. The workforce reductions totaled over 8,000 jobs in Mexico and Central and North America. Across the apparel industry in Honduras, about 25 factories had closed in 2008. The letter continued, "While expressing loud indignation at the JDH closure, at no time have the activists ever expressed a single note of concern for the displaced employees at the other closed plants, or even for the non-union employees at JDH (which were the majority). Their sole focus seems to be the union workers at JDH. To advance this campaign, the activists have gone to great lengths to paint Russell Athletic as 'the bad guys.'"

Conclusion

Professor Starr and the other members of the University of Michigan's President's Advisory Committee on Labor Standards and Human Rights met in early February to decide whether or not to recommend that the university terminate its contract with Russell. This was their last committee meeting before the March 31 deadline, and before them were the reports from the WRC and the FLA, outlined in **Exhibit 3**.

The FLA and WRC reports had been conducted by organizations that they had hired and entrusted to find the truth about labor issues in the supply chains. But the conclusions clearly conflicted. The committee members wondered, "Are these two organizations even investigating the same plants? How could they come to such different conclusions?" The WRC described the JDH working environment as a hostile situation in which union members were threatened with their lives, and the FLA investigations showed the relationship between the union and management at JDH had been one of mutual respect leading up to the plant closure announcement, and that Russell had a legitimate business reason for closing the factory. The Goldin report complicated the issue, as it shed further light on the workers' perspectives of hostility.

Russell clearly felt as if it was being attacked, and had chosen to paint the activists as radicals with dubious motives. But, was Russell "the bad guy"? How did the committee members know what to believe?

The members who had attended the union leaders' visit were particularly conflicted, as they had listened to the workers from Honduras speak directly about the threats that they had received toward themselves and their family members, and showed that the situation regarding unionization in Honduras was extremely controversial, and even dangerous.

Most members agreed that Russell did not have the proper communication or mechanisms in place to deal with the escalating situation, but the committee did not know how to best improve the situation. Should the university partner with Russell to help it improve working conditions? If so, how should or could this be done given its resources and the current relationships the university had with the CLC, WRC and the FLA? Should it terminate the contract to give Russell a clear signal that these violations would not be tolerated? What if it pulled the contract and other schools followed suit, thereby potentially putting Russell and more of its factories out of business and negatively affecting thousands of workers.

Eleven other schools had already cut their contracts with Russell:

1	University of Miami
2	University of Houston
3	Georgetown University
4	University of Wisconsin—Madison
5	Rutgers University
6	Duke University
7	University of Washington
8	Columbia University
9	Purdue University
10	Cornell University
11	Penn State University

Should Michigan be next on the list?

Exhibits

Exhibit 1
The Fair Labor Association Workplace Code of Conduct[58]

Forced Labor
There shall not be any use of forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise.

Child Labor
No person shall be employed at an age younger than 15 (or 14 where the law of the country of manufacture allows*) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.

Harassment or Abuse
Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse.

Nondiscrimination
No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination, or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

Health and Safety
Employers shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities.

Freedom of Association and Collective Bargaining
Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

Wages and Benefits
Employers recognize that wages are essential to meeting employees' basic needs. Employers shall pay employees, as a floor, at least the minimum wage required by local law or the prevailing industry wage, whichever is higher, and shall provide legally mandated benefits.

Hours of Work
Except in extraordinary business circumstances, employees shall (i) not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture or, where the laws of such country do not limit the hours of work, the regular work week in such country plus 12 hours overtime and (ii) be entitled to at least one day off in every seven day period.

Overtime Compensation
In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required in the country of manufacture or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Any Company that determines to adopt the Workplace Code of Conduct shall, in addition to complying with all applicable laws of the country of manufacture, comply with and support the Workplace Code of Conduct in accordance with the attached Principles of Monitoring and shall apply the higher standard in cases of differences or conflicts. Any Company that determines to adopt the Workplace Code of Conduct also shall require its licensees and contractors and, in the case of a retailer, its suppliers to comply with applicable local laws and with this Code in accordance with the Principles of Monitoring and to apply the higher standard in cases of differences or conflicts.

*All references to local law throughout this Code shall include regulations implemented in accordance with applicable local law.

Exhibit 2
FLA Principles of Monitoring[59]

I. OBLIGATIONS OF COMPANIES[60]

A. Establish Clear Standards

- Establish and articulate clear, written workplace standards
- Formally convey those standards to Company factories as well as to licensees, contractors and suppliers
- Receive written certifications, on a regular basis, from Company factories as well as contractors and suppliers that standards are being met, and that employees have been informed about the standards
- Obtain written agreement of Company factories and contractors and suppliers to submit to periodic inspections and audits, including by accredited external monitors, for compliance with the workplace standards

B. Create An Informed Workplace
Ensure that all Company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis

C. Develop An Information Database

- Develop a questionnaire to verify and quantify compliance with the workplace standards
- Require Company factories and contractors and suppliers to complete and submit the questionnaire to the Company on a regular basis

D. Establish Program to Train Company Monitors

Provide training on a regular basis to Company monitors about the workplace standards and applicable local and international law, as well as about effective monitoring practices, so as to enable Company monitors to be able to assess compliance with the standards

E. Conduct Periodic Visits and Audits

- Have trained Company monitors conduct periodic announced and unannounced visits to an appropriate sampling of Company factories and facilities of contractors and suppliers to assess compliance with the workplace standards
- Have Company monitors conduct periodic audits of production records and practices and of wage, hour, payroll and other employee records and practices of Company factories and contractors and suppliers

F. Provide Employees With Opportunity to Report Noncompliance

Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so

G. Establish Relationships with Labor, Human Rights, Religious or Other Local Institutions

- Consult regularly with human rights, labor, religious or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions and utilize, where companies deem necessary, such local institutions to facilitate communication with Company employees and employees of contractors and suppliers in the reporting of noncompliance with the workplace standards
- Consult periodically with legally constituted unions representing employees at the worksite regarding the monitoring process and utilize, where companies deem appropriate, the input of such unions
- Assure that implementation of monitoring is consistent with applicable collective bargaining agreements

H. Establish Means of Remediation

- Work with Company factories and contractors and suppliers to correct instances of noncompliance with the workplace standards promptly as they are discovered and to take steps to ensure that such instances do not recur
- Condition future business with contractors and suppliers upon compliance with the standards

Exhibit 3
Timeline of Published Reports by the WRC and FLA

Report	Dates Conducted	Date Released	Requested/ Funded By	Summary
Worker Rights Consortium Assessment	No date provided in report	Nov. 7, 2008	Worker Rights Consortium	JDH management was hostile and threatening towards union members, and Russell did not do enough to remedy the situation. The labor union seemed to be a factor for closing the JDH plant, and the WRC called for the plant to be re-opened.
Cahn Group Assessment	Oct. 27, 2008	Jan. 28, 2009	Fair Labor Association	Russell, based on documents that it provided, showed that it had legitimate business reasons to close the JDH plant, including reduction in demand for fleece products and the month-to-month lease at the JDH plant.
ALGI Assessment	Nov. 10–14, 2008	Jan. 28, 2009	Fair Labor Association	ALGI concluded, through its review of formal complaints against JDH, that the workers' claims of hostility had not been reported, and that most of the workers' animosity towards JDH occurred after the announcement of the plant closure.
Adrián Goldin Assessment (independent consultant)	Jan. 13–17, 2009	Jan. 28, 2009	Fair Labor Association *Completed in response to com-plaints about the ALGI report.*	Goldin reported that the workers' informal complaints of hostility held validity, and he concluded that the union's presence was likely a significant factor in the JDH closure.
Fair Labor Association Assessment	Jan. 28, 2009	Jan. 28, 2009	Fair Labor Association	The FLA sided with the Cahn Group and ALGI assessments, stating that the union activity was not the main reason for the JDH closure.

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Notes

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