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Columnists:

Ethical sourcing - Good news for industry-wide initiatives

By Phillip H Rudolph

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The Fair Factories Clearinghouse, a new database for member companies to collect and share information about workplace conditions in manufacturing facilities around the globe is to launch soon. Such efforts should be supported, writes Phil Rudolph



Earlier this summer, an event of significance for the corporate responsibility community passed largely unnoticed.

It received considerable ink in the American antitrust press. Not surprisingly, however, such publications are rarely found on the nightstands of CR practitioners.

On June 19, 2006, the United States Department of Justice sent a three-page letter (called a “business review letter” or “BRL”) to attorneys for the Fair Factories Clearinghouse (FFC), responding favorably to FFC’s proposal to operate a database for member companies to collect and share information about workplace conditions in manufacturing facilities around the globe.

The motivation behind FFC and similar industry initiatives is simple.

Companies sourcing from the developing world have come to recognise that, because their suppliers’ almost invariably serve multiple masters, no single customer – however good its ethical sourcing program – can remedy its suppliers’ ethical challenges.

As a result, a growing number of industry-wide efforts have sprung up to achieve solutions that cannot be achieved by companies working on their own.

In addition to FFC which, to date, involves primarily footwear and apparel companies, similar initiatives can be found in the electronics industry, the jewellery industry, the toy industry and elsewhere.

Sleeping with the enemy

For years, however, competition lawyers have (properly) advised their clients against “sleeping with the enemy.”

Collaborations with competitors are not only countercultural for most companies, they can be dangerously illegal.

Indeed, certain types of collusion between competitors can – and do – get folks, including senior company executives, tossed into the slammer in the United States.

Consequently, US antitrust lawyers are paid healthy sums to prevent company executives from doing anything that might result in their being fitted for orange jumpsuits (the sartorial style of choice for most discerning US penal institutions).

Which brings us to the FFC. FFC’s members believe the sharing of factory audit information will reduce inefficiencies associated with multiple audits of the same facilities, encourage transparency throughout the supply chain community, and foster constructive dialogue between factories and their multiple customers regarding how best to build systems and programs to eradicate sweatshop conditions.

Seeking permission

But FFC members – well trained by their lawyers – understand that such activities would, by their very nature, require dialogue and interaction with competitors or potential competitors. So FFC company representatives – preferring their own apparel products to those supplied free of charge by correctional authorities – requested guidance in the form of a BRL from the US government.

BRL’s do not confer a mantle of legality on activity. They are, instead, an indicator of the government’s enforcement intentions.

In this case, the US government stated that it “has no current intention” to challenge the FFC’s data gathering and sharing activities.

And while there is no guarantee that it won’t later challenge FFC’s efforts, I

am aware of no instance in which activities that received a favorable BRL were later attacked by the government.

A must-read

Why should you care? Because unilateral solutions to some of the most intractable problems plaguing production facilities in the developing world simply don't exist.

Because industry initiatives will therefore inevitably be more effective in addressing these difficult challenges.

And because the BRL – the applicability of which is not limited to the FFC – significantly reduces a potentially lethal legal impediment to such industry-wide efforts.

On this latter point, the FFC deserves praise and recognition for making the investment in blazing this important trail.

The BRL is not a “Get Out of Jail Free” card. It also is limited to US government enforcement, and does not apply to private suits or to regulatory activity outside of the US.

But it is a must-read for anyone looking to build industry-wide solutions to CR challenges.

The FFC can be found at
www.usdoj.gov/atr/public/busreview/216720.htm.

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In the interest of full disclosure, the author also undertakes corporate responsibility legal consulting on the side and – along with Robert Langer and Suzanne Wachstock at the law firm of Wiggin and Dana – provided pro bono assistance to FFC in connection with its request for this BRL.

Readers wishing to know more about what Ethical Sourcing looks like in practice should consider attending the Ethical Sourcing Forum in Paris on October 12 and 13 2006. More information is at:

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