DEPARTMENT OF JUSTICE
Antitrust Division

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October 31, 1996

Kenneth A. Letzler, Esquire
Lynda M. Clarizio, Esquire
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004

Dear Mr. Letzler and Ms. Clarizio:

This letter responds to your October 30, 1996 request, on behalf of the Apparel Industry Partnership (the "Partnership") and its members, for issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intention with respect to the Partnership's plan to discuss and decide how to develop standards to be used to inform and assure U.S. consumers that products have been made under decent and humane conditions.

The Partnership currently consists of representatives from footwear and apparel companies as well as labor, consumer, and human rights organizations.[1] Two of its members, Reebok and

[1]The Partnership is an informal association; it is not legally organized as a partnership. It consists of the following entities: Business for Social Responsibility; Interfaith Center on Corporate Responsibility (ICCR); International Labor Rights Fund; Karen Kane, Inc.; Lawyers Committee for Human Rights; Liz Claiborne, Inc.; L.L. Bean, Inc.; National Consumers League (NCL); Nicole Miller; NIKE, Inc.; Patagonia; Phillips-Van Heusen Corporation; Reebok International Ltd; Retail, Wholesale and Department Store Union, AFL-CIO, CLC; Robert F. Kennedy Memorial

NIKE, account for an estimated 24 and 32 percent, respectively, of sales of athletic shoes in the United States.[2] No other members of the partnership are significant direct competitors of one another. Although many of the other business entities that are members of the Partnership are also competitors, they account for relatively minor shares of sales in the apparel industry. Membership in the Partnership is voluntary, and the Partnership has no direct control over its members' actions.

This business review letter is based on the Department's understanding that the Partnership's objective is to articulate a set of standards relating to decent and humane working conditions. Companies that choose to adopt the standards will be able to inform consumers that their products are produced in accordance with them.

You have requested a statement of the Department's current enforcement intentions regarding discussions among Partnership members and others about how to develop such standards. The actual articulation of the standards will follow; the Partnership might also develop a monitoring system to assess compliance and methods to inform consumers that conforming products meet the standards. This business review letter does not indicate the Department's enforcement intentions with respect to any such subsequent actions.

You have represented that, in the course of the discussions, no participant will seek or disclose competitively sensitive nonpublic information and no participant will disclose data from which such information might be discerned. You have also represented that counsel will be present at all Partnership meetings and will develop guidelines on the permissible scope of discussions among members and that a written agenda and written minutes will be produced for each Partnership meeting.

Subject to the following caveats, the Department has concluded that it has no present intention to challenge the Partnership's discussions. The most likely competitive danger of

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Center for Human Rights; Tweeds, Inc.; Union of Needletrades, Industrial and Textile Employees (UNITE); and Warnaco,Inc. 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.

[2]Robert S. Lazich, *Market Share Reporter* (1996), citing *Sportstyle*, May 1995, p.29.

such discussions is the exchange, intended or otherwise, of competitively sensitive information. You have represented that there will be no such exchange. The participation of counsel at Partnership meetings should help ensure that the discussions will not have anticompetitive consequences. Counsel should be well-versed in antitrust law and should be present at all meetings, including those of working groups, and other substantive discussions involving direct competitors. Furthermore, direct competitors, such as NIKE and Reebok, should not be placed together in smaller working groups where communications are more detailed.

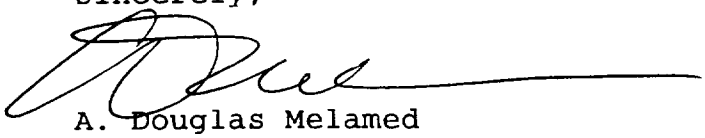
If the discussions are conducted in accordance with the foregoing representations and subject to the foregoing caveats, the risk of anticompetitive harm should be small. Moreover, these discussions could lead to procompetitive benefits. Consumers have expressed a desire to know the conditions under which products are manufactured, and the dissemination of accurate information about these conditions could meet this marketplace demand. In addition, the participation in the discussions by a variety of firms, including competitors such as NIKE and Reebok, could enhance the quality of their discussion and thus aid the Partnership in developing standards.

For the foregoing reasons and with the above stated caveats, the Department has no present intention to challenge either the Partnership's discussions about how to develop standards or the participation in those discussions by NIKE, Reebok or other Partnership members. In accordance with its normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently finds to be required by the public interest if the actual operation of this proposal proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data will be publicly available within 30 days of the date of this letter, unless you request that any

part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



A. Douglas Melamed
Acting Assistant Attorney
General