

Protecting your brand in the global marketplace

The luxury team at Covington & Burling discuss managing reputational risk at the contract stage.

Global apparel brands are facing uncomfortable questions about their brand values in the wake of the collapse Rana Plaza factory complex in Dhaka, Bangladesh where 1,127 people died. The disconnect between the brand values promoted by companies using the factory and the reality of appalling working conditions and fundamental lack of rights for workers producing the garments is stark. Failure to grapple with the issue to the satisfaction of consumers risks significant reputational damage and damage to brand equity. Apparel brand owners are taking the challenge to heart

Brands are taking action

H&M, Inditex (owner of Zara and Massimo Dutti), C&A, M&S, Mango, Primark, Tesco, Calvin Klein, Tommy Hilfinger and others are making a joint effort to improve the conditions for textile workers in Bangladesh by signing up to IndustriALL and UNI Global Union's Accord on Fire and Building Safety. The Accord is a legally binding agreement between the signatories, the two global unions and a number of apparel unions and NGOs in Bangladesh. In signing the Accord these global brands are pledging millions of dollars and committing to work with the unions collectively to tackle the issues that result in the unsafe working



conditions and exploitation of apparel workers.

During a five-year period, the Accord will, among other things: review existing building regulations and enforcement; conduct independent safety inspections with public reports; carry out mandatory repairs and renovations; and provide a forum for workers and their unions to be heard (including developing a complaint process and a mechanism for employees to report risks).

Other companies -- including Wal-Mart -- have chosen to work on the issues independently and promise to continue to facilitate positive change for Bangladeshi workers through their own corporate social responsibility programs. Whatever the approach, these brands recognise the potential damage to their brands of repeated crises of this nature -- and the financial and business cost of mounting expensive crisis management campaigns when these issues hit. In a shift of emphasis, brands are re-

focusing on the preventative measures that they can take to reduce the risk of this type of disaster happening again. Across the industry brands are looking again at their corporate social responsibility programs and thinking of new ways to raise standards and promote sustainability in the industry.

Managing reputational risk at the contract stage -- ten things to think about

To manage reputational risk, brand owners that are manufacturing, or plan to manufacture, in developing countries will need to make sure that every component of their supply chain is sustainable and complies with their own high safety standards, ethical principles and brand values. There are few shortcuts to doing this well, but basic contractual protections can help provide a framework for monitoring compliance and ensuring appropriate remedial action is taken if deficiencies are found.

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Ten practical steps for brands to consider:

1. Review the brand code of conduct: conduct an internal review of the brand code of conduct (the Code) to ensure that it is up-to-date and in line with the brand values and ethical principles -- if it is not, update it.
2. Make manufacturers adopt the Code: make the manufacturer's right to supply contingent on the manufacturer adopting and complying with the Code (and any changes to it that the brand makes during the term of the agreement) for the duration of the supply agreement.
3. Require regular compliance reviews: include an obligation in the supply agreement for the manufacturer to review its compliance with the Code regularly throughout the term of the supply agreement, possibly including self-certification of compliance or self-reporting of non-compliance.
4. Make manufacturers responsible for subcontractor compliance: if the manufacturer can subcontract any part of the manufacturing process, make the right to subcontract contingent on the subcontractor agreeing to comply with the Code and to undertake the same compliance reviews as the manufacturer.
5. Make manufacturers responsible for third party suppliers' compliance: impose a contractual obligation on the manufacturer to ensure that third party suppliers of raw materials satisfy the standards, principles and adhere to the values laid out in the Code.
6. Include audit rights: give the brand owner a right to audit compliance by the manufacturer, any subcontractor and any third party supplier on very short notice, to allow the brand owner to verify whether its Code is being complied with at every step of the manufacturing process.
7. Include rights to stop using a third party supplier/subcontractor: include provisions in the supply agreement that allow a brand owner to require a manufacturer to stop using any subcontractor or any third party supplier, if the brand owner determines in its absolute discretion that the third party is not complying with the spirit of the Code.
8. Include a right of immediate termination: make it clear in the supply agreement that the brand owner can terminate the manufacturing contract immediately if the manufacturer, or any subcontractor or third party supplier breaches the Code.
9. Include a right to terminate manufacturing of limited product lines: a brand owner may only have problems with one or more particular product lines. Give the brand owner flexibility by making sure the termination right can be enforced for one or more specific product lines, without having to terminate the entire agreement.
10. Reward compliance: consider giving a manufacturer preferential terms for compliance with higher standards or sustained compliance -- better pricing or preferential terms for achieving a "gold standard".