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Brown-Watson Case 15-06

**An Investigation Into Nestle's Efforts
To Establish Credibility In Its Global
Cocoa Supply Chain**

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Introduction

Nestle is one of the largest nutrition, health, and wellness companies in the world, producing products in over 86 countries.¹ Accordingly, Nestle's actions have an enormous impact on many people around the world. As a consultant for Human Rights Watch's (HRW) Business and Human Rights division, this case study seeks to analyze the effectiveness of Nestle Inc. USA's (Nestle) efforts to establish credibility in its Corporate Social Responsibility policies in the cocoa industry, in order to advise HRW on how to best respond. This paper will argue that although Nestle has made improvements in its efforts to eliminate the Worst Forms of Child Labor (WFCL)² from its global cocoa supply chain, Nestle's efforts are not credible because it is insufficiently transparent in the steps that it has taken to remedy this problem. Specifically, this paper will evaluate transparency in terms of the quantity, quality, accessibility, availability, and traceability of information to the public, information from third-parties, and Nestle's willingness to incur penalties if the information it provides is inaccurate. Further, this paper will focus on Nestle's efforts to eliminate the WFCL in its Côte d'Ivoire cocoa farms where approximately 40 percent of the world's cocoa is produced.

To do so, this paper will begin by outlining why HRW should be suspicious of Nestle's efforts to self-monitor, pointing to examples of Nestle's resistance to legal and government regulations and incentives to disregard its suppliers' use of the WFCL in its global supply chain. Understanding Nestle's incentives to either obey or disobey the International Labour Organization's (ILO) convention on the WFCL will prove essential to deciding the best forms of pressure that HRW, as an international activist NGO, can apply to enhance Nestle's transparency and credibility. The body of the paper will critically analyze the ways Nestle has tried to establish credibility. For instance, Part 1 will focus on what Nestle is 'saying'. It will draw on

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Nestle's official policies like Nestle's Supplier Code of Conduct, Corporate Business Principles, and official statements to analyze Nestle's efforts to establish credibility by investing in its reputation. Official statements and policies represent the image Nestle wants consumers, investors, shareholders, employees, government officials, NGOs, and the general public to see. Accordingly, it is important to examine official statements and policies to decipher if Nestle is following through with what it is saying or if it is just 'cheap talk'. To determine the validity of Nestle's statements and policies and to see if Nestle has followed through with what it says, this case study will compare Nestle's statements against its actions and the reality on the ground in Côte d'Ivoire. Part 2, the largest section, will focus on what Nestle is 'doing' to eliminate the WFCL from its global cocoa supply chain. It will examine the Nestle Cocoa Plan, an example of Nestle's efforts to establish credibility by pursuing ancillary activities and utilizing recognized independent third party certification schemes namely, UTZ Certified and Fairtrade International. This section will criticize Nestle's selective certification approach because it makes it difficult for consumers to know which products are certified and which ones are not and which product is certified by which organization. Additionally, Part 2 will draw on a current class action lawsuit against Nestle; to present a possible mechanism a HRW could support to ensure Nestle systematically eliminates the WFCL from its global cocoa supply chain. Part 3 will focus on who Nestle is turning to in order to verify Nestle's actions to combat the WFCL. Specifically, Part 3 will analyze Nestle's efforts to recover from its 'Nike problem' and rebuild credibility by turning to the Fair Labor Association (FLA), comparing Nestle's actions to Apple who also turned to the FLA to help rebuild Apple's credibility after its 2014 Foxconn scandal. Part 3 will note that Nestle chose to work with the FLA instead of the Workers Rights Consortium (WRC), an organization that professes to be more of an independent third-party verifier than the FLA.

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Ultimately, the paper will conclude by suggesting that HRW advocate for improved standards and monitoring and greater government regulation in the cocoa industry's global supply chain.

For the past 15 years, Nestle and its partners in the Cocoa Industry have been intensely resisting government regulation regarding eliminating WFCL in their global cocoa supply chain. The general public first became aware of child labour in West African cocoa farming in 2000 when True Vision released the 80 minute documentary "Slavery: A Global Investigation," which provides a graphic account of slavery and hazardous working conditions in cocoa production in Côte d'Ivoire.³ Immediately following pressure and outrage from civil society groups and media outlets,⁴ large chocolate and cocoa corporations — including Nestlé — responded by claiming that they did not know about the situation and, like the public, were concerned.⁵ United States government officials were also under pressure from civil society organizations, media outlets, and the general public. Accordingly, United States Representative Eliot Engel sponsored legislation that would obligate the U.S. Food and Drug Administration to indicate which products were produced using slave labour and which ones are not. Enough U.S. Senators supported Engel's legislation for it to pass through the Senate; however, at the last minute and after intense lobbying from the Cocoa Industry, Nestlé, Hershey, and eight other large chocolate and cocoa corporations signed the Engel-Harkin Protocol — or Cocoa Protocol — in September 2001.⁶ The Protocol was a non-binding and completely voluntary agreement to self-regulate and outlined a series of targets to be achieved on specific dates. The purpose of the Protocol was to eradicate child labour in its worst forms by 2005, in accordance with the ILO.⁷ But, when 2005 arrived and child labour in its worst forms had not been eradicated, the corporations extended their target to 2008. Then, in 2010, the corporations proposed The Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol, calling on its signatories to help reduce

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child labour by 70 percent by 2020.⁸ Therefore, not only has the cocoa industry resisted government regulation, but also the fact that the cocoa industry members have repeatedly missed self-set deadlines to eliminate the WFCL indicates that the industry members are not taking their commitments seriously.

Furthermore, HRW should be suspicious of Nestle's efforts to eliminate the WFCL because of the very nature of the self-monitoring system. The self-monitoring system is not credible as there is too much self-interest involved. For instance, in Nestle's case, if its competitors are also not complying with international norms like the ILO conventions and human rights, Nestle will likely be less motivated to properly monitor and enforce the standards throughout its supply chain. The pressure to earn profits is so high that companies look to make cuts on matters that are not 'essential' and the fact is that monitoring (especially by a third party) and enforcing norms are often seen as supplementary costs, especially when considering that companies have to answer to their shareholders. According to Peter Brabeck-Letmathe, Nestle's Chairman, "you shouldn't do good with money which doesn't belong to you. What you do with your own money, this is absolutely fine."⁹ As such, self-monitoring is not an effective system because the extent of monitoring and efforts are left to the company's discretion and, even more, companies can censor the information the public receives.

Part 1: Nestle's Official Statements vs. Its Actions

Part 1 of the case study will analyze Nestle's efforts to establish credibility by investing in its reputation. This section will argue that there is a significant discrepancy between Nestle's grandiose official policies and statements prohibiting the use of the WFCL, and the marginal actions Nestle has taken to eliminate the WFCL from its global cocoa supply chain. To do so, Part 1 will explore Nestle's Supplier Code, Nestle's official statements about its progress, and its

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level of commitment towards sourcing sustainable cocoa compared to its competitor, Mars Inc.. Throughout Part 1, this case study will also explore whether Nestle's statements contain substance and promise, or if they are just examples of 'cheap talk'.

Interestingly, reporters and the media have been the main leaders in questioning Nestle and the Cocoa Industry's business practices. For instance, CNN released a documentary in 2012 called "Chocolate's Child Slaves" in which CNN sent a team of reporters to investigate child labour in the cocoa industry in Côte d'Ivoire. CNN also created the CNN Freedom Project, which works to expose issues of slavery, human trafficking, and the humanitarian issues in the cocoa industry through its 'Cocoa-nomics' section.¹⁰ The fact that the CNN has criticized Nestle and the cocoa industry's practices demonstrates that establishing credibility is a 'two way street'. Simply put, Nestle tries to portray that it is socially responsible and reporters question Nestle's practices.

According to Nestle's official policies, Nestle appears to be both adhering to and enforcing human rights standards and ILO Conventions (like the prohibition of the WFCL) throughout Nestle's global cocoa supply chain. For instance, Nestle describes its Supplier Code as a set of "non-negotiable standards."¹¹ The first pillar in Nestle's Supplier Code is the human rights pillar. Nestle states that, "the use of child labour by the Supplier is strictly prohibited, in line with ILO Convention 138, on the Minimum Age, and Convention 182 on the Elimination of the Worst Forms of Child Labour."¹² However, the fact that Nestle states that respecting ILO conventions on child labour and the WFCL are non-negotiable terms between Nestle and its suppliers does not follow with the fact that Nestle officially acknowledges that child labour is prevalent in its global cocoa supply chain.¹³ In other words, if using the WFCL *really* were a

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non-negotiable term, Nestle would not stand for its presence in Nestle's global cocoa supply chain.

Nestle's official statements explain that Nestle has "made important progress with this action plan"¹⁴ to eradicate child labour from Nestle's cocoa supply chain.¹⁵ However, a recent study by Tulane University¹⁶ indicates that the situation is actually worsening. The study found that in 2013/14 there were approximately 260,700 more children between the ages of 5 and 14 years who were working in hazardous working conditions in Côte d'Ivoire than in 2008/09.¹⁷ Thus, the situation that Nestle describes in its official statements does not coincide with the reality on the ground in Côte d'Ivoire.

Furthermore, Nestle has yet to produce a concrete plan outlining when it will source entirely sustainable cocoa. Nestle states that it seeks to increase the quantity of cocoa sourced sustainably (100,000 tonnes by 2015; 120,000 tonnes by 2016; 150,000 tonnes by 2017), but Nestle's timeline for this project stops at 2017.¹⁸ Conversely, Nestle's competitor, Mars, "has pledged to certify 100% of its cocoa as sustainably produced by 2020."¹⁹ Though 'sustainability' is a vague term that has different meanings depending on who uses it, the fact is that Mars has supported its grandiose official statements with tangible and time-specific action, while Nestle has not.

As such, Nestle fails to establish credibility in its official statements and policies because Nestle does not support its statements with reciprocal actions. This is not to completely denounce all of Nestle's statements, but rather, to provide a framework within which to better understand the extent of Nestle's commitment to eliminating the WFCL from its global cocoa supply chain.

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Part 2: The Nestle Cocoa Plan

The Nestle Cocoa Plan represents Nestle's effort to establish credibility by pursuing ancillary activities and through self-certification that is backed by recognized independent third parties. This section of the case study will begin by presenting the Nestle Cocoa Plan's achievements and examining its transparency, based on the information Nestle provides those who seek it out by conducting independent research on the Internet. Second, Part 2 will analyze the certification schemes that Nestle has chosen to partner with for the Nestle Cocoa Plan namely, UTZ Certified and Fairtrade, and consider the Nestle Cocoa Plan's transparency and credibility within this context. Third, Part 2 will present a class-action case filed in California against Nestle USA to explore a possible path to enhance Nestle's transparency in both the Nestle Cocoa Plan and its global cocoa supply chain. In doing so, Part 2 will grapple with the question of whether it is consumers' responsibility to investigate if the WFCL were used in the production of the product — by looking online or doing independent research — or if it is the company's responsibility to provide the information to consumers directly.

As part of Nestle's efforts to demonstrate it is working towards eliminating the WFCL in its global cocoa supply chain, Nestle invested approximately \$110 million to establish the Nestle Cocoa Plan in 2009.²⁰ The Nestle Cocoa Plan "aims to improve the lives of cocoa farming communities and the quality of cocoa [Nestle] purchase[s]."²¹ Specifically, the Nestle Cocoa Plan has enabled Nestle to establish Farmer Field Schools in which Nestlé supports its farmers by partnering with Anader, an NGO in Côte d'Ivoire, that goes into cocoa growing communities to teach best farming practices.²² Additionally, the Nestle Cocoa Plan improves social conditions by working to remove the barriers children face to attend school. Even more, through the Nestle Cocoa Plan, Nestle collaborates with the International Federation of Red Cross and Red Crescent

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Societies to improve access to water in rural communities in Côte d'Ivoire.²³ The Nestle Cocoa Plan exemplifies Nestle's attempt to establish credibility by pursuing ancillary activities. Although Nestle should be commended for the positive attributes of the Nestle Cocoa Plan, it fails to enhance Nestle's credibility because Nestle is not transparent in its actions. Specifically, Nestle provides incomplete and insufficient information regarding the details of the Nestle Cocoa Plan and its certification schemes.

At first glance, the Nestle Cocoa Plan appears to be transparent because Nestle provides many statistics and figures to indicate the Nestle Cocoa Plan's progress to eliminate the WFCL in Nestle's global cocoa supply chain, in a manner that is accessible and readily available on both the Nestle Cocoa Plan and Nestle's official websites. However, upon closer examination, it becomes clear that Nestle has materially omitted — or made it difficult to find — information regarding the Nestle Cocoa Plan's progress in relation to Nestle's actions in the rest of its global cocoa supply chain. For instance, in highlighting its efforts to combat the WFCL in its global cocoa supply chain, Nestle asserts that it has implemented Child Labour Monitoring and Remediation Systems — a Nestle Cocoa Plan program to train community liaison members to identify instances of the WFCL in cocoa farms — in 22 of its Côte d'Ivoire co-ops. Interestingly, it is very difficult to find information on how many co-ops Nestle has in Côte d'Ivoire and how many farms are in a co-op. Nestle states that the Nestle Cocoa Plan is active in Côte d'Ivoire, Ghana, Brazil, Ecuador, Venezuela, Mexico, and Indonesia, but Nestle does not provide any information regarding how the Nestle Cocoa Plan is distributed across the countries.²⁴ It is left to the researcher to make sense of this information. Since the Child Labour Monitoring and Remediation system is part of the Nestle Cocoa Plan and there are 67 co-ops in the Nestle Cocoa Plan, the researcher can infer that approximately 32 percent of the co-ops involved in the Nestle

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Cocoa Plan have Child Labour Monitoring and Remediation systems.²⁵ Further, Nestle states that 25 percent of its total cocoa production is produced through the Nestle Cocoa Plan.²⁶ However, because Nestle does not specify how much cocoa each co-op or even each country produces in relation to the rest of Nestle's global cocoa supply chain, the researcher is unable to decipher what proportion of Nestle's co-ops have Child Labour Monitoring and Remediation Systems. This is problematic because it serves as a barrier to criticizing Nestle for not taking enough action. It is as if Nestle is providing enough information for a sceptical public to see that it is doing *something*, but not enough information for critics to actually *do* anything with. Critics are simply supposed to trust that because UTZ Certified and Fairtrade International — two publicly recognized independent third-party verifiers — certify the Nestle Cocoa Plan, it must be a credible self-certification sustainable sourcing program.

UTZ Certified is in and of itself a credible independent third-party verifier. At the organization's core, it focuses on sustainable farming, improving the lives of farmers, and enhancing traceability in the cocoa, coffee, and tea industries. UTZ Certified ensures that the farms and cooperatives have good working conditions, strictly prohibits the use of child labour in accordance with Conventions 138 and 182 of the International Labour Organization,²⁷ and it trains farmers to produce higher volumes at a lower cost and in a manner that is environmentally friendly.²⁸ To monitor compliance with UTZ Certified's values, it works with independent third parties to annually inspect cooperatives, farms, and producer groups.²⁹ Additionally, UTZ Certified created the Good Inside Portal specifically to enhance traceability of products throughout supply chains. The Good Inside Portal enables end manufacturers like Nestle to log into a portal to see which suppliers were involved in its supply chain and, thus, ensure that the product derives from a credible source.³⁰ Interestingly, those who wish to register for the Good

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Inside Portal must provide the name of their organization. Therefore, while producers, exporters, traders, grinders, processors, manufacturers, and retailers can all join the portal, it is not available to the general public.³¹

Even though, once again, consumers are put in a situation where they do not have access to sufficient information about Nestle's global cocoa supply chain, when Nestle certifies its supply chain using UTZ Certified, consumers can be confident that the WFCL were not used in the production of the product. As an independent third party, UTZ Certified provides Nestle with credibility. However, only fourteen out of Nestle's 114 national branches globally are UTZ Certified for the cocoa industry.³² Put slightly differently, Nestle cocoa products are *not* certified by UTZ in 88 percent of the countries in which Nestle operates.

Fairtrade International is also a credible independent third-party certification system in the cocoa industry. Like UTZ Certified, Fairtrade strictly prohibits the use of child labour. Fairtrade prides itself in working to ensure that farmers in developing countries are paid a 'fair' price for goods by instituting a price floor for the products farmers produce. The price floors serve as the minimum price a farmer will receive, but it is possible for better quality goods to receive a higher premium payment.³³ Furthermore, producers that are members of Fairtrade are audited two times in a three-year certification cycle.³⁴ Thus, Fairtrade helps Nestle establish credibility for the Nestle Cocoa Plan; consumers can have confidence in the fact that Fairtrade has strict requirements and policies for its members and Fairtrade does not turn a blind eye to the WFCL in the global cocoa supply chain.

On December 8, 2015, Nestle UK and Ireland announced that as of January 1, 2015, all of Nestle UK and Ireland's cocoa would be certified sustainable through the Nestle Cocoa Plan.³⁵ It seems logical that Nestle UK and Ireland is the first Nestle national branch to source only

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sustainable cocoa, because the UK has the highest awareness of Fairtrade and the highest Fairtrade sales. In 2013, shoppers in the UK spent over 2 billion Euros on Fairtrade. To put this figure in context, in 2013, shoppers around the world spent 5.5 billion Euros on Fairtrade.³⁶ The fact that Fairtrade is popular in the UK and Nestle UK and Ireland has decided to source only sustainable cocoa indicates that consumer pressure in the UK has forced Nestle to act and change its sourcing practices. Furthermore, in the self-monitoring system, Nestle is able to selectively certify products based on consumer demand, rather than truly investing in sustainability and safe working conditions at all levels of the supply chain as a corporation.

Given the information presented above, in theory, the Nestle Cocoa Plan should be credible. UTZ Certified and Fairtrade International are both recognized independent third-party verifiers who strictly prohibit any use of the WFCL in the global cocoa supply chain and both certification schemes have monitoring systems in place to ensure compliance at all levels. In fact, having both UTZ Certified and Fairtrade International should mean that the Nestle Cocoa Plan is *especially* credible. However, according to Nestle's *Creating Shared Value and Meeting Our Commitments 2013* report, "This year, [Nestle] purchased 62, 299 tonnes (about 14.5% of [Nestle's] cocoa) through the Nestle Cocoa Plan, of which 75% was certified UTZ or Fairtrade."³⁷ Nestle does not provide information about what portion of the Nestle Cocoa Plans is certified by UTZ and what portion is certified by Fairtrade. This is an important distinction to make, because they are two different certification schemes. For instance, Fairtrade provides farmers with a price premium regulated by a price floor, which helps to protect farmers in case of price fluctuation. On the other hand, though UTZ Certified also provides farmers with a price premium, the price is negotiated between the buyer and seller and is not monitored by UTZ.³⁸ It

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is very difficult — if not impossible — for a consumer to decipher which product was certified by which organization and in which country the certified version of the product is available.

Even more, Nestle's statement indicates that no independent third-party certifies 25 percent of the Nestle Cocoa Plan's products. Setting aside 25 percent of the Nestle Cocoa Plan's products as non-independently certified provides Nestle with flexibility in case Nestle is accused of using the WFCL — which, as previously mentioned, is strictly prohibited by both UTZ and Fairtrade — in the Nestle Cocoa Plan's global supply chain. Perhaps this is Nestle's mechanism to establish credibility through two reputable independent third-party certifiers — and, in the process, expand its consumer base — without having to incur potential costs to the reputation and legitimacy of the Nestle Cocoa Plan if its practices do not coincide with its policies. As such, the Nestle Cocoa Plan has such a shallow level of transparency (because it is not completely verified by third parties and Nestle does not appear to be willing to incur a penalty if it is wrong) that Nestle fails to establish credibility in its efforts in the Nestle Cocoa Plan.

In hopes of introducing product-labelling standards to enhance Nestle's transparency in its global cocoa supply chain, Hagens Berman Sobol Shapiro LLP — representing Plaintiff Elaine McCoy — filed a class-action lawsuit against Nestle on September 28, 2015.³⁹ Hagens Berman Sobol Shapiro LLP describes itself as “a national class-action and complex litigation law firm that takes on the world's largest corporations and entities, fighting for the rights of consumers, investors, whistleblowers, employees, and others.”⁴⁰ Interestingly, the firm operates on a contingency basis, meaning that the Plaintiff only pays for the firm's services if the case does well. Among the firm's major successes, it filed a class-action case against Toyota automobile's sudden unintended acceleration, representing twenty million class members. The firm settled the case for \$1.6 billion.⁴¹

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Accordingly, Hagens Berman Sobol Shapiro LLP is in an excellent position to represent the Plaintiff in the class action case against Nestle. The Firm accuses Nestle U.S.A. and Nestle Mexico S.A. of violating California's Business & Professions Code (The Unfair Competition Law), California Civil Code (the Consumers Legal Remedies Act), and the False Advertising Law.⁴² The Complaint criticizes Nestle for its "hollow public relations statements [that] mask the tragic truth that millions of African children are engaged in the Worst Forms of Child Labor."⁴³ It is wise for the Firm to attack Nestle for unfair competition and false advertising, rather than for violating international law or build a case specifically around Nestle's use of the WFCL in its global cocoa supply chain. While human rights and respecting ILO Conventions are obviously incredibly important, the very nature of human rights is that they are international norms, a set of guidelines that are extremely difficult for a court to enforce. Also, it does not seem logical for the Firm to file a case against Nestle's actions in its African cocoa farms in California because the state of California does not have legal jurisdiction in African countries and so the court would be confined in its possible actions. The Complaint argues that "even were the Ivorian human rights abuses a problem that Nestle was powerless to solve (it is not), Nestle would still be obligated to disclose to consumers at the point of sale the existence of child and slave labor in its supply chain for Chocolate Products."⁴⁴ In forming this argument, the Firm draws on the basis of Representative Engel's legislation that almost passed in 2001 that would have obligated chocolate manufacturers to label if products were used using slave labour.

The fact that almost fifteen years later, the same dialogue about chocolate companies labeling whether or not slave labour was used to produce the product is taking place demonstrates that the current system of self-monitoring is not working. In the current system, Nestle provides partial or incomplete information and has the power to selectively certify its

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products. In doing so, Nestle leaves consumers confused or falsely confident in the ‘goodness’ of Nestle’s products. It should not be the consumers’ responsibility to research whether or not the WFCL were used in the production of the product, because, in such a situation, companies work hard to make sure that such information is either not available, incomplete, or difficult to find. Since companies have strong incentives to withhold this information from consumers, government regulation is important. Government regulation could necessitate companies providing information to consumers, especially information that companies would rather not disclose. Chocolate manufacturers do not want to remind consumers of the fact that slave labour was likely used to produce the product. If they did so, consumers would be faced with an intense moral dilemma each time they went to purchase a chocolate bar. Thinking about the human suffering that went into the production of the chocolate bar would certainly make many consumers reconsider their desire to purchase it. Accordingly, if chocolate manufacturers were legally required to disclose at the point of purchase whether or not the WFCL were used in its global supply chain, chocolate manufacturers like Nestle would have strong incentives to eliminate the WFCL at all levels of production.

Part 3: Rebuilding Credibility Through the Fair Labor Association

Part 3 of the case study will analyze Nestle’s efforts to recover from its ‘Nike Problem’ and rebuild credibility by turning to the Fair Labor Association (FLA), a third-party monitoring organization. First, Part 3 will explore why Nestle might have chosen to work with the FLA as opposed to another third-party monitoring organization like the WRC. Second, Part 2 will argue that although it is good Nestle has sought out a third-party monitoring organization, the fact that Nestle has chosen to work with the FLA — a monitoring organization that is criticized for being ‘sensitive’ to companies’ situations and so not entirely independent — and that the FLA only

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investigated Nestle's farms that are part of the Nestle Cocoa Plan, demonstrates that Nestle is not being sufficiently transparent in its global cocoa supply chain. To further explore the process of re-establishing credibility after a scandal by working with the FLA, Part 3 will also compare Nestle and Apples' experiences.

It is important to emphasize that Nestle has chosen to work with the FLA instead of the WRC. The FLA prides itself in being a forum where members of civil society organizations, university representatives, and companies can gather to discuss issues of Corporate Social Responsibility and, specifically, working conditions at all levels of production.⁴⁵ On the one hand, it can be seen as good that the FLA includes companies in the conversation, because, at the end of the day, companies know the 'ins and outs' of their global supply chains and understand the pressures in the industries best. Understanding the pressures to ignore Corporate Social Responsibility issues like workers' rights and the WFCL are essential prerequisites to understanding how to pressure companies to take action and improve their behaviour. On the other hand, the WRC criticizes the FLA for not being independent *because* company representatives are on the FLA's board. Contrarily, the WRC does not include companies on its board. The WRC is composed of representatives from American universities, labor rights organizations, and representatives from the United Students Against Sweatshops.⁴⁶ As a consensus-based organization,⁴⁷ companies on the board of the FLA have the power to essentially define the FLA's rules so that the FLA's rules and policies take into account companies' perspectives and can ensure that the FLA does not institute policies that would be highly unfavourable to companies. Accordingly, it seems logical that Nestle has chosen to work with the FLA instead of the WRC because companies have more influence in the FLA's processes than the WRC.

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Although it is good that Nestle has chosen to seek out a third-party monitor to enhance Nestle's credibility in its efforts to eliminate the WFCL in its global cocoa supply chain, Nestle's efforts to work with the FLA do not sufficiently enhance Nestle's transparency because the FLA only investigated Nestle's Côte d'Ivoire cocoa farms that are part of the Nestle Cocoa Plan. Approximately 25 percent of Nestle's cocoa farms are part of the Nestle Cocoa Plan, meaning that 75 percent of Nestle's cocoa farms are *not* under the Nestle Cocoa Plan.⁴⁸ Thus, the FLA investigation presents an incomplete picture of the situation on Nestle's cocoa farms. The FLA conducted thirteen unannounced visits on four of the Nestle Cocoa Plan's co-ops. In the FLA's report, the FLA notes that it "selected these four cooperatives through a stratified random sampling taking into account criteria such as location, tier-1 suppliers sourcing from the cooperative, certification status, and involvement in Nestle's Child Labor Remediation and Monitoring Systems."⁴⁹ Given that the FLA essentially selected the 'best' co-ops to monitor — the co-ops that are part of the Nestle Cocoa Plan and have Child Labor Remediation and Monitoring Systems — it is particularly concerning that the FLA found numerous violations of Nestle's Supplier Code of Conduct. For instance, the FLA investigation found that workers on the cocoa farms were typically not aware of Nestle's corporate policies. The FLA investigation even found an instance of forced labour on Nestle's cocoa farms. In response to the investigation, Nestle said it would re-negotiate its contract with the supplier and ensure that the worker got paid.⁵⁰ But, why has Nestle chosen to renegotiate its contract with the supplier instead of terminating the contract? Nestle is not being transparent in its actions, because 'renegotiating' is a vague term and Nestle's renegotiations with its suppliers happen privately. It is difficult to confirm whether or not the renegotiations happened or what conditions were put in place or altered during the renegotiations. Additionally, the FLA found 25 child workers (children under

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the age of 15) on the farms they visited and 31 young workers, some of the children were working in hazardous conditions like operating machetes and transporting heavy loads. Interestingly, three of the four farms where the FLA found instances of child labor and the WFCL had Child Labor Monitoring and Remediation Systems.⁵¹ As such, the fact that the FLA visited cocoa farms that are part of the Nestle Cocoa Plan, have Nestle's Child Labor Monitoring and Remediation Systems in place, and the FLA still found instances of forced labor and the WFCL in Nestle Côte d'Ivoire cocoa farms raises concerns about conditions in the 75 percent of Nestle cocoa farms that do not have such programs to eliminate the WFCL. Nestle's partnership with the FLA does not adequately enhance Nestle's transparency or credibility because the investigation was not an accurate representation of Nestle's global cocoa supply chain.

Similarly, Apple turned to the FLA to recover from its 'Nike Problem' after consumers learned of the poor working conditions in Apple's Foxconn factories and the "wave of suicide workers."⁵² Foxconn is a supplier in China that manufactures Apple's iPads and iPhones. The major issues in the Foxconn factories were long working hours, crowded working conditions, child labor, and improper disposal of waste.⁵³ The FLA investigation (which was funded by Apple)⁵⁴ confirmed that Apple was taking steps to improve working conditions in the Foxconn factories.⁵⁵ However, according to a *New York Times* article, critics of the FLA, "said the most recent audit played down problems found by other investigators, such as unpaid overtime and Foxconn's use of unpaid interns."⁵⁶ Thus, further demonstrating that companies like Apple and Nestle who are looking to rebuild credibility and recover from a 'Nike Problem' — in terms of both issues with the companies' poor credibility and negative public images — may turn to the FLA because its investigations and reports are more likely than the WRC to frame companies' efforts in a relatively decent light.

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Even though it is true that a third party monitor can enhance companies' transparency and credibility in its efforts to improve adherence to international norms like the ILO's Convention on the WFCL, Nestle's partnership with the FLA does not increase Nestle's credibility because the FLA only investigated Nestle's 'best' cocoa farms. The FLA investigation was surely not an accurate representation of the conditions on Nestle's cocoa farms because a majority (75 percent) of Nestle's cocoa farms are not part of the Nestle Cocoa Plan. Accordingly, should Nestle choose to continue working with the FLA as a third-party monitoring organization to increase its transparency — especially since the FLA is criticized for not being independent — Nestle should ensure that future investigations include farms that are not part of the Nestle Cocoa Plan. Better yet, Nestle should expand the Nestle Cocoa Plan's coverage across its global cocoa supply chain.

Conclusion

This case study has explored Nestle's efforts to establish credibility in the self-monitoring system. It has acknowledged that Nestle has enhanced its efforts to address human rights abuses. However, this case study has argued that Nestle is not sufficiently transparent in its efforts (both statements and actions) to eliminate the WFCL from its global cocoa supply chain. Part 1 of the case study has discussed the discrepancy between Nestle's official statements professing Nestle's solidarity with the importance of human rights and the ILO conventions and Nestle's actions to eliminate the WFCL from its global cocoa supply chain. Then, Part 2 has reasoned that Nestle fails to establish credibility through the Nestle Cocoa Plan, even though independent third parties certify it, because the Nestle Cocoa Plan utilizes an unclear selective certification process. Part 3 has contended that Nestle did not increase its transparency or credibility by working with the FLA because the FLA only investigated Nestle's Côte d'Ivoire cocoa farms that are part of the Nestle Cocoa Plan and, thus, the results are not an accurate representation of Nestle's global

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cocoa supply chain. In addition, the fact that the FLA's investigations found violations of Nestle's Supplier Code even on the farms that receive extra attention through the Nestle Cocoa Plan suggests that there are more severe violations on Nestle's Côte d'Ivoire cocoa farms that have not been investigated by an independent third-party.

Given the information presented in the case study, it is advisable that HRW take action to pressure Nestle to enhance its transparency and improve Nestle's credibility. As an international activist NGO, HRW can use its reputation to hold countries and businesses accountable to their responsibility to both protect and respect human rights. First and foremost, HRW should conduct its own independent investigation on the ground in Côte d'Ivoire to investigate the WFCL and working conditions more broadly on Nestle's cocoa farms. Although boycotts and targeting shareholders' interests are two of Nestle's possible pressure points, it is not advisable for HRW to pursue either of those routes. Even if either a boycott or convincing shareholders of the importance of respecting human rights and the WFCL were to work, the results continue to provide Nestle with the ability to offer partial, incomplete, inaccessible, or confusing information. In this situation, consumers would still be left to trust that the information Nestle is providing is accurate, even though Nestle has incentives to disobey ILO conventions and human rights standards.

Instead, HRW should write press releases and use social media to officially support Hagens Berman Sobol Shapiro LLP's class actions to enact product-labelling standards in which chocolate manufacturers would be obligated to state whether or not slave labour was used to produce the product. In doing so, HRW could utilize its strong reputation to enhance awareness of the issues and encourage public support. Chocolate manufacturers will be eager to avoid labeling their product as having used slave labor, so they will have high incentives to improve

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working conditions at all levels of its global supply chain. It is advisable to pursue government regulation, because doing so would bring about a sustainable systematic change to the entire cocoa industry.

Endnotes

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