

Canon And Lexmark Litigation Lead To Uncertainty In Print Toner/Cartridge Industry

By: Peter S. Bauman, Esq.

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The industry for remanufactured printer/toner cartridges has flourished for years as users purchase replacements from third party suppliers who fill a need and offer print supplies at prices significantly lower than those offered by the original manufacturers and OEM's.

There has been litigation by original manufacturers in the past, premised on third party suppliers infringing patent rights in the cartridges being sold, but the manufacturers seem to have been satisfied in picking and choosing their targets, while permitting the broader industry of third party suppliers to survive.

Things have changed. Perhaps it's the difficult world economy and generally shrinking market for printer cartridges that has led to a more aggressive strategy in recent years. Now, companies like Canon and Lexmark are taking more significant steps to enforce IP rights and shut down third party suppliers of remanufactured printer/toner cartridges, whether they be based outside the US, or those based in the US who resell cartridges originally sold internationally.

Canon is perhaps the biggest fish in the sea, as its cartridges are used not only in Canon printers, but those of HP as well. HP has long held a significant share of the computer printer market.

The broadest salvo fired by Canon against third party suppliers came in March 2012 when it filed a patent infringement suit at the US International Trade Commission and in Federal Court naming more than thirty companies.

According to a recent [article](#) in Actionable Intelligence, Canon is seeking a General Exclusion Order at the Trade Commission, which "would bar the importation of all infringing SKUs, regardless of manufacturer," a result that "would have a chilling effect on the entire aftermarket industry for toner supplies in the United States."

Lexmark, which also filed against foreign third party suppliers at the US International Trade Commission in 2010, has more recently been pursuing US toner cartridge re-manufacturers, sending letters demanding that they settle or risk being added to current infringement litigation in US Federal Court. [[Actionable Intelligence](#) (June 5, 2012)]

The litigation in this industry has significant potential impact on users of remanufactured cartridges who could find their current suppliers out of business, or raising prices after agreeing to settlements with Canon, Lexmark and the like.

Unfulfilled orders may be at risk, as well as IT budgets that assume cartridge prices which may be unrealistic in the current environment.

These and other risks should be addressed by companies who contract with third party suppliers. Contractual indemnification for losses and the cost of defense against lawsuits brought by the Canon's of the world is certainly advisable but may be insufficient to fully protect users.

A review of corporate insurance policies and risk management related to contractual breach, economic loss and lawsuit defense also seems warranted as part of an overall strategy for dealing with these issues.

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