

Legal Requirements For Refilled Cartridges

Epson has purchased numerous cartridges described as “refilled” or “remanufactured” and found that many of them infringe Epson’s patents or are sold illegally. Epson respects the rights of competitors that compete fairly, but will take vigorous action against those that do not.

You should review the U.S. Customs Certification requirements posted on this website to avoid seizures of imported refilled cartridges.

1. The following criteria will assist in avoiding patent infringement:

- a) Many cartridges described as “remanufactured” are actually infringing new cartridges. Such deceptive marketing not only infringes Epson patents but also illegally deceives consumers that may be purchasing refilled cartridges for environmental reasons.
- b) Refilling an infringing cartridge results in another infringing cartridge, so you should be cautious in sourcing refilled cartridges
- c) Refilled cartridges that were EPSON branded cartridges must have first been sold by Epson to consumers in the U.S. There is a “first sale” exception to patent law that allows the refilling and resale of patented devices that were first sold in the U.S., provided no other patents are infringed. Epson has observed that some Chinese suppliers commingle cartridges first sold by Epson to consumers in the US with cartridges first sold by Epson outside the U.S and then package the cartridges identically, so resellers cannot reliably avoid liability for patent infringement
- d) The refilling process must be limited to legally permissible repair to restore the cartridge to usable condition, but not complete reconstruction by replacing major components like the ink tank and IC chip.

Epson has observed that some refillers and resellers illegally infringe Epson trademarks or illegally misrepresent refilled cartridges.

2. The following criteria will assist you in avoiding trademark infringement and illegal misrepresentations:

- a) Refilled cartridges must be prominently described at point of sale and on packaging as “refilled” or “remanufactured.” The U.S. Federal Trade Commission (“FTC”) has collected substantial fines from resellers that sold “remanufactured” products as new. (See e.g., <http://www.ftc.gov/opa/2002/08/ebabylon.shtm>) Similarly, new aftermarket cartridges cannot be falsely described at point of sale and on packaging as “refilled” or “remanufactured.”
- b) Epson trademarks on refilled cartridges must be removed or covered so consumers are not misled into believing that the cartridges were refilled or approved by Epson.

- c) You cannot use any misleading or unsubstantiated competitive claims to sell refilled cartridges. Depending on the available substantiation, examples of potentially misleading claims include statements like "Refilled in USA," "Same ink as OEM cartridges," or "Meets or exceeds OEM specifications."

The legal requirements for importing, distributing and reselling refilled cartridges are enforceable by government authorities and through civil lawsuits in the U.S. District Courts. The General Exclusion Order issued by the U.S. International Trade Commission ("ITC") prohibits importing new or refilled ink cartridges that infringe Epson patents and a Cease and Desist Order prohibits the ITC respondents and their distributors from selling infringing cartridges. U.S. Customs is actively enforcing the GEO. Also, the U.S. Federal Trade Commission actively enforces laws that prevent deceptive sales of refills, for example by failing to describe the cartridges as "refilled" or "remanufactured". In addition to such government enforcement, Epson has filed U.S. District Court lawsuits in Portland, Oregon against numerous manufacturers, distributors and retailers for patent infringement.