

Legal Requirements For Refilled Cartridges

Epson has purchased many cartridges described as “refilled” or “remanufactured” that infringe Epson’s patents or are sold illegally. Epson is also aware that there are several US-based remanufacturers that try to comply with the patent and trademark laws. Epson respects the rights of competitors that compete fairly, but will take vigorous action against those that do not.

1. **Epson has observed that some refillers and resellers illegally infringe Epson trademarks or illegally misrepresent refilled cartridges. The following criteria will assist in avoiding patent infringement:**

- a) **Infringing New Cartridges:** Many cartridges described as “remanufactured” are actually infringing new cartridges. Such deceptive marketing not only infringes Epson’s patents but also illegally deceives consumers that may be purchasing refilled cartridges for environmental reasons.
- b) **Refilled Infringing Cartridges:** Refilling an infringing cartridge results in another patent infringing cartridge, so you should be cautious in sourcing refilled cartridges.
- c) **First Sale Rule:** 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.
- d) **Sourcing Legitimate Cartridges:** US patent laws provide that manufacturers and resellers of remanufactured cartridges are responsible for determining that the cartridges they sell comply with the first sale rule and do not otherwise infringe U.S. patents. Ignorance of the actual origin of cartridges is not a defense. As such, remanufacturers must rely on directly collecting cartridges from U.S. users, or certifications of legality by the manufacturers or brokers that supply the cartridges. Epson recommends that manufacturers and resellers require suppliers to convincingly certify legal compliance and indemnify purchasers for patent infringement claims.
- e) **Lot codes:** Epson uses several cartridge attributes to determine whether a cartridge was manufactured for first sale in the United States. Each Epson genuine ink cartridge has a lot code stamped on the cartridge. The lot code is a 6-digit alphanumeric series similar to a serial number and contains important information about the cartridges. (See Attachment A for photographs showing lot codes on Epson genuine ink cartridges.) Among other factors, the lot code includes indicators of the destination market. Some remanufacturers have erased some or all of the lot code, apparently to disguise the origin of the empty cartridges. Any attempts to modify the original lot code are suspicious and are likely indications of an illegal attempt to circumvent the first sale rule. Precise information concerning the lot codes and related information is complex and confidential.
- f) **Mixed Cartridges:** Epson has observed that some Chinese suppliers commingle cartridges first sold by Epson to consumers in the U.S. 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.

- g) **Legally Permissible Repair:** 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.
- h) **Physical Product Authentication:** If you have any questions concerning the authenticity of a cartridge you have purchased, you can send the cartridge directly to Epson for authentication.

Epson America, Inc.

Attn: Cartridge Authentication Program (MS 5-0)

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- Send the product in question to Epson
- Include your contact information and be prepared to provide purchase information. Manufacturers and resellers that refuse to provide purchase information for infringing products or empties not first sold in the US will be disqualified from further authentication requests.
- Epson will analyze the product and provide you with a response
- Epson will not return any submitted product.

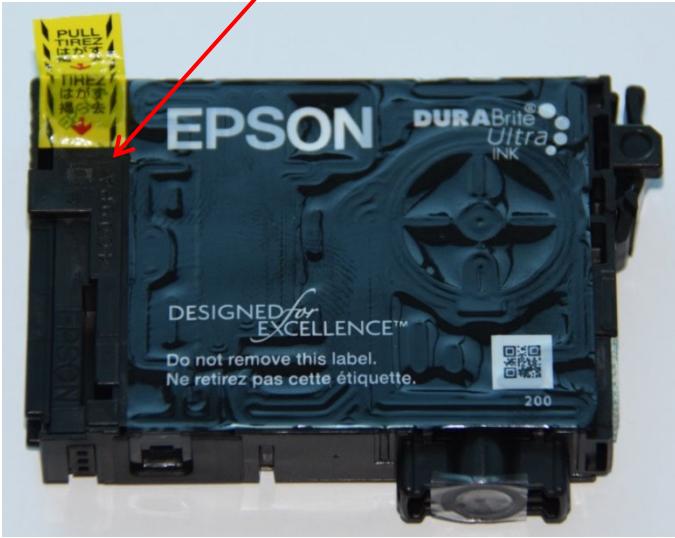
2. The following criteria will assist you in avoiding trademark infringement and illegal misrepresentations:

- 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 ITC actions and U.S. District Court lawsuits in Portland, Oregon against numerous manufacturers, distributors and retailers for patent infringement.

Attachment A Lot Codes

Lot Code



**Lot Code
(color enhanced)**



Lot Code

