

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SEIKO EPSON CORPORATION and)
EPSON AMERICA, INC.,)
)
Plaintiffs,)
)
v.)
)
ORIGINAL SUPPLY INC.)
)
Defendant.)

Civil Action No. 1:21-cv-3451

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiffs Seiko Epson Corporation and Epson America, Inc. (collectively, “Epson”) by and through their undersigned counsel, complain of Defendant Original Supply Inc.’s (“Defendant” or “Original Supply”) misconduct and allege as follows:

NATURE OF THIS ACTION

1. Epson seeks preliminary and permanent injunctive relief and monetary damages for Defendant’s false advertising, unfair competition, and counterfeiting under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), arising from Defendant’s infringing resale of Epson ink products via online commerce sites including, but not limited to, www.amazon.com.
2. In short, Defendant advertises and offers for sale various “new” Epson products through its “Original Supply” Amazon Seller Account. However, rather than receiving new Epson products as advertised, a customer either receives (1) product that is different from the product advertised and/or (2) counterfeit product.
3. Defendant’s conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, to the irreparable injury of Epson.

4. As a result of Defendant's actions, Epson is suffering a loss of the enormous goodwill that it has created in its brand and is losing profits from lost product sales, and hereby seeks preliminary and permanent injunctive relief and damages for Defendant's false advertising, unfair competition, unfair and deceptive business practices, and counterfeiting.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims arise under the Trademark Laws of the United States.

6. This Court has personal jurisdiction over Defendant, which has its principal place of business within this District. Defendant also sells products within the United States, the State of New York, and this District; misrepresents the nature of the products it sells to residents of the United States, the State of New York, and this District; has caused injury to Epson in the United States, the State of New York, and this District; practices the unlawful conduct complained of herein, in part, within the United States, the State of New York, and this District; regularly conducts or solicits business within the United States, the State of New York, and this District; and regularly and systematically directs electronic activity into the United States, the State of New York, and this District with the manifest intent of engaging in business within the United States, the State of New York, and this District, including the sale and/or offer for sale of purportedly genuine Epson ink products to Internet users within the United States, the State of New York, and this District.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because the Defendant resides in this District, and because some of Defendant's wrongful acts described herein occurred in this District.

PARTIES

8. Plaintiff Seiko Epson Corporation is a Japanese corporation headquartered in Suwa, Nagano. Plaintiff Epson America, Inc. is a California corporation having its principal place of business in Los Alamitos, California. It is a principal subsidiary of Seiko Epson Corporation. Epson is a leading manufacturer in the printer, professional imaging, projector, scanner, systems devices, and factory automation categories (the “Epson Products”). Epson is also a leading innovator with respect to accessories used by the Epson Products. In particular, and relevant to the instant Complaint, Epson has designed and patented specific ink cartridges and refill systems that are used for its printers, which are sold bearing its EPSON® trademark (the “Epson Ink Products”). Indeed, Epson has been a leading innovator since it was founded in 1942.

9. Defendant Original Supply Inc. is a New York corporation with its principal place of business located at 63 Flushing Ave., Building 3, Suite 201, Brooklyn, New York 11205. Original Supply advertises and sells various office supply products, but primarily printer ink and toner cartridges, through Amazon.com (seller account “Original Supply” - Amazon ID A3BVNDV7E8C0P8). At all relevant times, Original Supply has listed purportedly genuine Epson Ink Products for sale through its Amazon.com seller account.

FACTS GIVING RISE TO THIS ACTION

10. This action seeks redress for Defendant’s deliberate and unlawful false advertising, unfair competition, counterfeiting, and unfair and deceptive practices regarding the Epson Products that it advertises and offers for sale via Amazon.com.

A. Epson Manufactures High-Quality Products and Achieves High Customer Satisfaction Ratings

11. Epson is recognized throughout the world and the United States as a leading manufacturer of consumer and business electronics products.

12. As a market leader, Epson continues to set standards for image quality, performance, and innovation with its ever-evolving product line. Epson's commitment to delivering quality products is recognized by the industry through various product awards and industry recognition.

13. Epson prides itself on achieving the highest customer satisfaction ratings, accomplished in large part by Epson's industry-leading customer service and support. For example, Epson offers its ink products with a one-year standard limited warranty.

B. Epson's Registered Trademarks

14. Seiko Epson Corporation is the owner of a variety of trademarks in the specific classes of goods for ink, cartridges, and bottles specifically including but not limited to EPSON® (Reg. No. 1,134,004), EPSON® (Reg. No. 2,144,386), EPSON® (Reg. No. 2,949,374), EPSON® (Reg. No. 3,092,025), Better Products for a Better Future® (Reg. No. 3,875,333), EPSON EXCEED YOUR VISION® (Reg. No. 3,448,351), DURABRITE (Reg. No. 2,644,235) among others (the "Trademarks").

15. The Trademarks are world famous and distinguish Epson Products, including Epson Ink Products.

16. The Trademarks are valid, subsisting, in full force and effect, registered and are incontestable as provided by Section 1065 of the Lanham Act.

17. Each year Epson spends significant amounts to develop and maintain the considerable goodwill they enjoy in the Trademarks and in their reputation for high quality.

18. Defendant does not now have, and has never had, Epson's consent to use the Trademarks or any other of its intellectual property.

C. Defendant's Infringing Resale of Epson Ink Products

19. Epson does not have, and has never had, any relationship with Defendant. Defendant does not now, and has never, purchased Epson Ink Products directly from Epson.

20. Still, Defendant currently lists over 256 separate Epson Ink Products on its Amazon seller account.¹

21. Defendant advertises the Epson Ink Products it sells as being genuine and in "new" condition.

22. Epson has completed test buys of Epson Ink Products advertised and sold by Defendant, which confirmed that the Epson Ink Products it sells are not genuine or new, but are either counterfeit or products in used condition being sold as new.

23. When a customer purchases one of the 250+ Epson Ink Products available for resale by the Defendant, he/she receives (1) product that is different from the product advertised and/or (2) counterfeit product.

24. Verified consumer reviews of the Defendant's "Original Supply" Amazon Seller Account confirm that consumers are receiving Epson Ink Products that are different from those advertised by the Defendant.

25. Despite advertising and selling the Epson Ink Products as being in "new" condition, the follows examples of feedback from customers evidence the subpar condition of the Epson Ink Products sold by Defendant:

¹ Defendant's Amazon Storefront is available at: <https://www.amazon.com/sp?seller=A3BVNDV7E8C0P8>.



"This item when placed in copier simply does not print anything out, looks as if it was previously used. NOT NEW."

By Jeffrey Bowers on May 24, 2021.



"Item was not OEM not in OEM box as pictured. This was misrepresented. Also the refund was less than what I paid. Shouldn't it be in full since it was misrepresented and I would not have purchased in the first place?"

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By JSA on January 24, 2021.



"The product page describes this item as NEW. The items I received were clearly OLD, used, damaged and repackaged. Thanks for nothing but a waste of time. I paid top dollar for NEW. Instead, I have to waste my time returning these. I expect to get hit with a restocking fee for false advertising by seller. I'm sick of these kinds of sellers on Amazon."

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By Lopetinez on March 20, 2020.



"One of the ink cartridge(Magenta) inside the package is broken. Half of the ink is gone."

By Nile W on March 31, 2020.



"Terrible terrible terrible. Ribbons were bone dry. Refund was not the amount that I paid for these ribbons. Buyer Beware!"

By Tim on April 5, 2020.



"THIS SELLER IS A THIEF! DO NOT PURCHASE FROM THEM! I ordered 4 toners, they took my money and shipped 1 toner. After multiple emails they shipped the other 3, when received late, all were opened used toners. I demanded my money back immediately, they refused. I cannot operate my business without toner. THEY ARE THEIFS & LIARS, DO NOT PURCHASE FROM THEM!"

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By Sherri F. on April 20, 2020.



"Received a defective print cartridge. Contacted seller but was not helpful & did not provide an exchange or refund."

By Ilan on April 13, 2020.



"I returned the damaged ink cartridges. Are you able to send the cartridges in a box for better protection if I place a new order?"

By Amazon Customer on May 27, 2020.



"cartridges were defective, i was credited \$1.08 on \$70+ order. what a ripoff. DO NOT BUY FROM THIS SELLER "

By JG on June 10, 2020.



"Item was not OEM not in OEM box as pictured. This was misrepresented. Also the refund was less than what I paid. Shouldn't it be in full since it was misrepresented and I would not have purchased in the first place?"

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By JSA on January 24, 2021.

26. Similarly, feedback on the Defendant's page makes clear that the Defendant improperly distributes or packages its Epson Ink Products:



"Terrible. The black ink cartridge must have exploded so when I opened the packaging, the black ink spilled ALL OVER me and everything. Then they charged me a RESTOCKING FEE???? Who are you going to re-sell this exploding black ink cartridge to??? I want my \$82 refund in FULL, not the insulting \$51, the black ink destroyed my clothing and had to scrub my hands clean. You are terrible. "

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By Lauren on January 31, 2021.



"both ink cartridges leaked ink "

By Joe ZAPPA on November 10, 2020.



"The package you sent me was disgusting both black and color containers were faded and the color ink box had ink smudges on it. When i opened the color ink green ink was everywhere. It got all over my fingers and my desk. Very disappointed by this purchase. I sent you 2 messages and you failed to respond to either ! "

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By Lisa on November 18, 2020.



"Package received damaged and missing the "Matte Black" Cartridge "

By Carlos M. Pocasangre on March 4, 2020.

27. Moreover, rather than receiving Epson's industry leading customer service, Defendant's customer service and Epson Ink Product knowledge is lacking:



"We returned this product, intact, not opened and received less than \$2 as a refund. We paid \$144! Very very disappointed with this seller."

By Employers Overload on March 30, 2021.



"They sent the wrong toner cartridge, did not fit the printer."

By John Isaacson on June 29, 2020.



"The ink doesn't work in the printer, it is defective. I want to send it back for a full refund. Where is the shipping label?"

By gahr gardner on July 10, 2020.



"Terrible. The black ink cartridge must have exploded so when I opened the packaging, the black ink spilled ALL OVER me and everything. Then they charged me a RESTOCKING FEE????? Who are you going to re-sell this exploding black ink cartridge to??? I want my \$82 refund in FULL, not the insulting \$51, the black ink destroyed my clothing and had to scrub my hands clean. You are terrible."

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By Lauren on January 31, 2021.

28. Defendant is also selling counterfeit Epson Ink Products.
29. On or about February of 2019, Epson purchased an "Epson DURABrite Ultra T252420 Ink Cartridge - Yellow" from Defendant.
30. The product was shipped from ORIGINAL SUPPLY, 63 Flushing Ave, BLDG 3, STE 201, BROOKLYN, NY 11205.
31. The product that Epson received was not a genuine Epson Ink Product, but rather a counterfeit product.
32. The counterfeit product that Epson received in the test buy bore the EPSON® trademark on the ink cartridge itself as well as on the packaging.
33. On or about March of 2020, Epson purchased an "Epson DURABrite Ultra 252 or T252 Black and Color C/M/Y Ink Cartridge Combo 4/Pack" from Defendant.

34. The product was shipped from ORIGINAL SUPPLY, 98 Skillman Street, Suite 4-R, Brooklyn, NY 11205. Process address at the New York Secretary of State for Defendant is the same 98 Skillman Street, Suite 4-R, Brooklyn, NY 11205.²

35. The product that Epson received was not a genuine Epson Ink Product; it was a counterfeit product.

36. The counterfeit product that Epson received in the test buy bore, at a minimum, the EPSON® and DURABRITE® trademarks.

D. Impact on Consumers and Epson

37. Consumers expect that the Epson Ink Products they purchase from Defendant will be genuine Epson Ink Products in “new” condition as advertised. Instead, they receive different and/or counterfeit products.

38. Purchasers of Epson Ink Products from Defendant are likely to be, and have actually been, misled and deceived by Defendant’s counterfeiting, trademark infringement and literally false product listings and advertisements.

39. Consumers expect Defendant’s advertisements for the Epson Ink Products they sell to be accurate, and base their purchasing decisions in large part on those representations. That is, consumers pay a relatively higher price for an Epson Ink Product purchased from Defendant because they want to purchase a genuine, new Epson Ink Product, not a counterfeit or used product.

40. Consumers who purchase Epson Ink Products from Defendant believing them to be genuine and new are misled and confused when they instead receive counterfeit products.

² See https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry (search “Original Supply” and select “Original Supply Inc.”) (last accessed June 15, 2021).

41. After having a poor experience with a counterfeit Epson Ink Product purchased from Defendant (which the consumer reasonably believed was genuine and new), the consumer is less likely to purchase another Epson Ink Product in the future.

42. Consumers who purchase Epson Ink Products from Defendant believing them to be genuine and new, and not knowing that they are actually different and/or counterfeit, blame Epson for the confusion as to the condition of the product.

43. Defendant's misconduct is damaging to Epson's reputation and goodwill, and is damaging to the consuming public.

44. By advertising the Epson Ink Products it sells as genuine, new Epson Ink Products, Defendant is intentionally attempting to entice consumers to purchase Epson Ink Products from it instead of purchasing genuine, new Epson Ink Products from Epson.

45. The natural, probable, and foreseeable result of Defendant's wrongful conduct described above has been to cause confusion, deception, and mistake in the market, to deprive Epson of business and to tarnish its goodwill, to injure Epson's relationship with existing and prospective customers, and to divert sales of Epson Ink Products.

46. Therefore, Defendant's continued sale of counterfeit Epson Ink Products, as well as its trademark infringement and false advertisement of Epson Ink Products has harmed and continues to harm Epson, its consumers, and Epson's relationship with consumers.

47. Defendant's counterfeiting, trademark infringement and false advertisement of Epson Ink Products to consumers results in actual and irreparable harm to Epson and consumers.

48. Defendant's actions substantially harm Epson and its consumers, who ultimately purchase Epson Ink Products from Defendant reasonably believing them to be new, genuine, quality Epson Ink Products.

49. As a result of Defendant's actions, Epson is suffering a loss of the enormous goodwill it has created in the Trademarks. Epson is also suffering ongoing actual damages in the form of lost sales.

50. Defendant is likely to continue the acts complained of herein, and unless restrained and enjoined, will continue to do so, causing Epson and consumers irreparable harm.

COUNT I
Trademark Infringement - 15 U.S.C. § 1114

51. Epson hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

52. Seiko Epson Corporation is the owner of exclusive rights to the Trademarks. Defendant's counterfeiting, importation, manufacture, advertisement, display, promotion, marketing, offer for sale, sale, and/or distribution of the Epson Ink Products described herein is likely to cause confusion or to cause mistake or to deceive the relevant public and trade regarding the affiliation, sponsorship, endorsement or approval of Defendant's Epson Ink Products by Epson.

53. Defendant has used and continues to use in commerce unauthorized reproductions, copies, and/or colorable imitations of the Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of the Epson Ink Products, which uses are likely to cause confusion, mistake and/or deception among consumers.

54. Defendant is therefore liable for infringement of the Trademarks pursuant to 15 U.S.C. § 1114.

55. Given the misconduct described above, Defendant acted with knowledge of the federally registered trademarks alleged herein and of the valuable goodwill Epson enjoys in connection therewith, with intent to confuse, mislead and deceive the public.

56. Defendant's use of reproductions, copies, and/or colorable imitations of the Trademarks, without Epson's consent or authorization, was and continues to be intentional and willful within the meaning of 15 U.S.C. § 1114 and § 1117.

57. Epson has suffered and continues to suffer irreparable harm and damages as a result of Defendant's acts of trademark infringement in amounts thus far not determined but within the jurisdiction of this Court, which amounts should each be trebled pursuant to 15 U.S.C. § 1117.

58. In order to determine the full extent of such damages, including such profits as may be recoverable under 15 U.S.C. § 1117, Plaintiffs will require an accounting from Defendant of all monies generated from the importation, manufacture, distribution and/or sale of Defendant's products as alleged herein.

59. In the alternative, Epson may elect to recover up to \$2,000,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(c) for each Trademark counterfeited by Defendant.

60. Defendant's conduct has injured Epson in an amount to be determined at trial, and has caused and will continue to cause irreparable injury to Epson, for which Epson has no adequate remedy at law. As such, Epson seeks injunctive relief pursuant to 15 U.S.C. § 1116, as well as actual damages and Defendant's profits pursuant to 15 U.S.C. § 1117(a), and their reasonable attorneys' fees in prosecuting this action pursuant to 15 U.S.C. § 1117(a).

61. Further, because Defendant's infringing conduct has been and continues to be willful, Epson is entitled to an enhanced damages award pursuant to 15 U.S.C. § 1117(a).

COUNT II

False Advertising / Unfair Competition - 15 U.S.C. § 1125(a)

62. Epson hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

63. Defendant has made and distributed, in interstate commerce and in this District, product listings and advertisements that contain literally false or misleading statements of fact regarding the Epson Ink Products sold by it. These advertisements contain actual misstatements and/or misleading statements, including that the Epson Ink Products Defendant sells are genuine Epson Ink Products in “new” condition, when, in fact, they are materially different and/or counterfeit.

64. These literally false statements actually deceive, or have a tendency to deceive, a substantial segment of Epson’s customers and potential customers. This deception is material in that it is likely to influence the purchasing decisions of Epson’s customers.

65. This conduct also constitutes unfair competition and false designation of origin under the Lanham Act.

66. Defendant’s conduct is unfair competition and false and misleading advertising, which injures both consumers and Epson.

67. Defendant’s conduct violates Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

68. Defendant, as described more fully above, has caused, and will continue to cause, immediate and irreparable injury to Epson for which there is no adequate remedy at law. As such, Epson is entitled to an injunction under 15 U.S.C. § 1116 restraining Defendant, its distributors, retailers, agents, employees, representatives, and all persons acting in concert with it, from engaging in further acts of false advertising, and ordering removal of all Defendant’s false advertisements from the Internet, including but not limited to on www.amazon.com.

69. As a direct result of Defendant’s unfair and deceptive trade practices, customers seeking genuine, new Epson Ink Products did not purchase them from Epson and instead unknowingly purchased counterfeit Epson Ink Products from Defendant. Therefore, the demand

for Epson Ink Products created by Epson was not fulfilled by the purchase of a genuine, new Epson Ink Product. This results in lost revenue and actual damages to Epson.

70. Pursuant to 15 U.S.C. § 1117, Epson is entitled to recover from Defendant the damages sustained by Epson as a result of Defendant's acts in violation of Section 43 of the Lanham Act.

71. Pursuant to 15 U.S.C. § 1117, Epson is also entitled to recover from Defendant the gains, profits, and advantages that it has obtained as a result of its unlawful acts. Epson is presently unable to ascertain the full amount of the gains, profits, and advantages Defendant has obtained by reason of its unlawful acts.

72. Pursuant to 15 U.S.C. § 1117, Epson is further entitled to recover the costs of this action. Moreover, Epson is informed and believes that Defendant's conduct was undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling Epson to recover additional damages and reasonable attorneys' fees.

WHEREFORE, Plaintiff Epson America, Inc., prays for judgment in its favor and against Defendant providing the following relief:

1. For temporary, preliminary, and permanent injunctive relief prohibiting Defendant, its distributors, retailers, agents, or anyone working for, in concert with, or on behalf of Defendant, from:
 - a. engaging in any infringement, counterfeiting, false or misleading advertising with respect to Epson's products, which relief includes but is not limited to removal of all of Defendant's listings for Epson Products from the Internet, including but not limited to www.amazon.com.
 - b. Advertising, selling, or taking any steps to sell, any Epson Products;

- c. Engaging in any activity constituting unfair competition with Epson; and
 - d. Inducing, assisting, or abetting any other person or entity in engaging in or performing any of the business activities described in the paragraphs above.
2. For an order requiring Defendant to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of the Epson Products sold by it, including without limitation, the placement of corrective advertisement and providing written notice to the public to cure any residual impacts from Defendant's false advertising;
3. Adjudge Defendants to have violated 15 U.S.C. §§ 1114, 1125(a) by counterfeiting the Trademarks, infringing upon the Trademarks, and unfairly competing against Epson by using infringing, false, deceptive, or misleading statements of fact that misrepresent the nature, quality, and characteristics of the Epson Products sold by it;
4. Award Epson its damages suffered as a result of Defendant's acts and treble said damages as provided by law pursuant to 15 U.S.C. § 1117;
5. Award Epson Defendant's profits as a result of Defendant's acts and treble said damages as provided by law pursuant to 15 U.S.C. § 1117;
6. Award Epson statutory damages of \$2,000,000.00 per mark pursuant to 15 U.S.C. § 1117(c);
7. Award Epson its reasonable attorneys' fees in bringing this action as allowed by law pursuant to 15 U.S.C. § 1117;
8. Award Epson pre-judgment and post-judgment interest in the maximum amount allowed under the law;

9. Award Epson the costs incurred in bringing this action; and
10. Grant Epson such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Epson hereby requests a trial by jury on all causes of action so triable.

New York, New York
Dated: June 18, 2021

/s/ Priya Chadha

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