

**EXHIBIT A**



Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

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Founded 1909

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May 10, 2021

**VIA US MAIL AND E-MAIL**

Genie Trading Group LLC  
c/o Amy Frei and Alexander Frei  
11 Cayuga Court  
Springfield, NJ 07081

[support@inkgenie.com](mailto:support@inkgenie.com)  
[info@inkgenie.com](mailto:info@inkgenie.com)  
[afrei@blofficesupplies.com](mailto:afrei@blofficesupplies.com)

Re: Unauthorized Sales of HP Products

Dear Amy Frei and Alexander Frei:

HP Inc. (“HP”) has retained Vorys, Sater, Seymour and Pease LLP to represent it in connection with your unauthorized sales of HP-branded ink and toner products (“HP Products”) through your website [www.inkgenie.com](http://www.inkgenie.com). As set forth below, such sales are unlawful.

You must immediately remove all HP Products from your website and all other unauthorized websites, stop selling any and all HP Products, and identify all sources of HP Products you are selling.

**HP Products May Only Be Sold By Authorized Sellers Through Authorized Channels.**

Only sellers expressly authorized by HP are permitted to sell HP Products to end users. Authorized Resellers and Authorized Distributors (hereinafter, “Authorized Sellers”) are required to sell HP Products only in certain channels and are subject to HP’s Qualified Partner Program Terms and Conditions (collectively, the “HP Terms”). It is only by limiting sales to Authorized Sellers who are required to follow the HP Terms that HP is able to ensure the satisfaction of consumers and to maintain the integrity and reputation of HP’s brand. For these reasons, all

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individuals and entities—including Authorized Sellers—are prohibited from selling HP Products on online marketplace websites without authorization from HP.<sup>1</sup>

To further protect the HP brand and prevent consumer confusion, HP has secured a number of trademarks relating to the HP brands (the “HP Trademarks”).<sup>2</sup> HP is the only entity entitled to use or license the HP Trademarks in the United States. You are not an Authorized Seller of HP Products and are not authorized to use the HP Trademarks to market or sell HP Products.

## **Your Acquisition and Sale of HP Products Tortiously Interferes With HP’s Contracts and/or Business Relationships With Its Authorized Resellers and Distributors.**

As noted above, HP’s Authorized Sellers are permitted to sell only in certain channels and pursuant to certain restrictions. HP’s Authorized Distributors are permitted to sell HP products only to approved customers designated in their agreements. HP’s Authorized Resellers may sell HP Products only to end-users.

To the extent you are acquiring HP Products from an HP Authorized Distributor, you are tortuously interfering with HP’s contract and/or business relationship with that Authorized Distributor. HP’s Authorized Distributors are permitted to sell HP products only within a closed network designated in their agreements. Because you are not within that closed network, any time you purchase HP products from an HP Authorized Distributor, you are interfering with the Authorized Distributor’s contract with HP and causing it to breach that contract. Such conduct constitutes tortious interference with HP’s contract and/or business relationship.

If you are acquiring HP Products from an HP Authorized Reseller, you are also tortuously interfering with HP’s contract and/or business relationship with that Authorized Reseller. Authorized Resellers are permitted to sell products only to end-users and are prohibited from selling products to third parties for purposes of resale. Because you are not an end-user customer, any time you purchase products from an HP Authorized Reseller for purposes of resale, you are interfering with the Authorized Reseller’s contract with HP and causing it to breach that contract. Such conduct also constitutes tortious interference with HP’s contract and/or business relationship.

You now have clear notice of these restrictions. If you continue to acquire HP Products from HP’s Authorized Resellers or Distributors, such actions will constitute tortious interference

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<sup>1</sup> Pursuant to the Terms, Authorized Sellers are prohibited from selling HP Products on any third-party marketplace site, including Amazon, Walmart Marketplace, eBay, etc., without the prior written consent of HP. If you are an HP Authorized Seller, your sales of HP Products on a marketplace website violate the Terms. You must immediately remove such listings or HP will terminate you as an Authorized Seller and seek other available relief.

<sup>2</sup> HP Inc. has registered several trademarks with the United States Patent and Trademark Office (“USPTO”), including, but not limited to: HP® (U.S. Trademark Reg. No. 4272548).

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with HP's contracts and/or business relationships. *See, e.g., Australian Gold, Inc. v. Hatfield*, 436 F.3d 1228, 1235-38 (10th Cir. 2006) (affirming \$500,000 damages award for tortious interference with a dealer agreement).

## **Your Sale Of HP Products Violates the Lanham Act.**

Regardless of where you acquired HP Products, your unauthorized sale of HP Products violates the Lanham Act pursuant to 15 U.S.C § 1114. Your listings of products bearing the HP Trademarks are likely to confuse and deceive consumers because they suggest to consumers that (1) you are affiliated with or sponsored by HP, (2) HP approves of the products you sell, and (3) the products you sell are delivered with all the same benefits and characteristics as HP Products sold by Authorized Sellers. *See* 15 U.S.C. § 1114; *Courtenay Commc'ns Corp. v. Hall*, 334 F.3d 210, 213 n.1 (2d Cir. 2003). Such representations are untrue because HP has not authorized you to sell its products and the products you sell do not come with the same benefits as genuine HP Products sold by HP and its Authorized Sellers.

It is well-recognized that goods are not genuine if they fail to conform to quality control standards imposed on authorized sellers. *See, e.g., Zino Davidoff SA v. CVS Corp.*, 571 F.3d 238, 243 (2d Cir. 2009) (holding that “goods are not genuine if they do not conform to the trademark holder’s quality control standards”); *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633, 643 (1st Cir. 1992) (holding that the difference in quality controls created a presumption of customer confusion); *Ahava (USA), Inc. v. J.W.G., Ltd.*, 250 F. Supp. 2d 366, 369 (S.D.N.Y. 2003) (concluding that an unauthorized product “is not considered genuine if the [product] does not meet the trademark owner’s quality control standards”).

HP imposes quality controls that are unique to genuine HP Products, including but not limited to: requiring Authorized Sellers to store, handle, and ship products in accordance with specific guidelines designed to ensure quality; forbidding Authorized Sellers from relabeling, repackaging or otherwise altering HP Products or any labels or literature accompanying the products; prohibiting Authorized Sellers from tampering with, defacing, or otherwise altering codes or other identifying information on products and packaging; and requiring Authorized Sellers to inspect products regularly for damage or defect. In the event that an Authorized Seller identifies any quality-related issues for any HP product, the Authorized Seller is required to notify HP immediately so that HP can investigate the concern—and if necessary—alert other Authorized Sellers and remove any such products from its authorized sales channels.<sup>3</sup> The products you sell

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<sup>3</sup> Courts have held that when purchasers of unauthorized products are limited in their ability to be informed of recall and safety information, they are not receiving the “full bundle of services and product features that typically accompany such a purchase[.]” and therefore, have not received a genuine product. *Beltronics USA, Inc. v. Midwest Inventory Distrib. LLC*, 522 F. Supp. 2d 1318, 1327 (D. Kan. 2007), *aff'd* *Beltronics USA, Inc.*, 562 F.3d 1067

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are not subject to and do not abide by these quality control requirements. Thus, the products you sell are not genuine HP Products. *See Shell Oil Co. v. Commercial Petroleum, Inc.*, 928 F.2d 104, 107 (4th Cir. 1991). Further, your unauthorized sale of HP Products without adhering to HP's quality control standards harms the HP brand, causes consumer confusion, and compromises consumer safety and well-being.

In sum, consumers who purchase HP Products from you are receiving products that are not subject to, interfere with, and that do not abide by HP's quality control requirements, increasing the likelihood that these consumers could receive damaged products or have an otherwise unsatisfactory experience, causing them to lose confidence in the HP brand. Because the products you sell do not comply with HP's quality controls and do not offer unique benefits available only through HP's Authorized Sellers, they are materially different from genuine HP Products. *See, e.g., Ahava (USA), Inc.*, 250 F. Supp. 2d at 369.<sup>4</sup>

### **To Avoid A Lawsuit, You Must Cease and Desist Sales Of HP Products Immediately.**

For the foregoing reasons, your sales of HP Products are illegal. **You must immediately cease all sales of HP Products, remove all HP listings from [www.inkgenie.com](http://www.inkgenie.com) and any other website or third-party marketplace you may operate or utilize, and disclose your source of HP Products.** If you fail to comply, HP intends to file a lawsuit against you seeking all available monetary damages—including disgorgement of profits, compensatory damages, attorneys' fees, and investigative and other costs—as well as all injunctive relief to which it is entitled. In connection with its lawsuit against you, HP will investigate and obtain the identities of all individuals and entities involved in your illegal sales, and will seek ownership or de-indexing from search engines of all websites that you use to sell HP Products. If you ignore this notice and any subsequent lawsuit, HP intends to seek and execute a default judgment against you for all of the monetary and injunctive relief outlined above.

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<sup>4</sup> In addition, the products you sell do not come with the HP Warranty, which provides that HP will repair or replace a product within the warranty period on account of a defect in the product's materials or workmanship. Critically, the HP Warranty is only available to HP products purchased from Authorized Sellers who are subject to HP's quality controls; it is not available for products sold by unauthorized sellers who are not subject to HP's quality controls. Because you are not an Authorized Seller who is subject to HP's quality controls, the unauthorized products you sell do not come with the HP Warranty. Courts have held repeatedly that products sold without applicable warranties are materially different from genuine products. *See, e.g., Beltronics USA, Inc.*, 562 F.3d at 1075-76 (affirming preliminary injunction for Plaintiff where unauthorized product did not include manufacturer's warranty); *TracFone Wireless, Inc. v. Pak China Grp. Co.*, 843 F. Supp. 2d 1284, 1298 (S.D. Fla. 2012) (holding that products sold with invalid warranties were materially different than genuine products); *Perkins Sch. For the Blind v. Maxi-Aids, Inc.*, 274 F. Supp. 2d 319, 326 (E.D.N.Y. 2003) (holding that Plaintiff stated a claim for infringement where defendant sold product with inferior warranty).

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You should also be aware that, if you ignore this letter and continue to unlawfully sell HP Products, you will be subject to personal jurisdiction in California where HP is headquartered. Courts around the country hold that online sellers are subject to personal jurisdiction in the state where a plaintiff trademark owner is located. *See, e.g., Cornice Techs., Inc. v. Affinity Dental Prods.*, No. 04-cv-01133-EWN-OES, 2005 U.S. Dist. LEXIS 45546, at \*12 20 (D. Colo. July 21, 2005) (“A defendant’s use of a web site to conduct business in the forum state, such as having a website that a customer in the forum state can access and purchase the infringing product, provides a basis for a court’s exercise of personal jurisdiction.”); *Leach v. Pharmedoc Inc.*, No. CIV-16-1034-M, 2017 U.S. Dist. LEXIS 33565, at \*5 6 (W.D. Okla. Mar. 9, 2017) (defendant subject to personal jurisdiction because it “was operating a commercial business through Amazon”); *Hand & Nail Harmony, Inc. v. Int’l Nail Co.*, No. CV 15-02718 SJO, 2015 U.S. Dist. LEXIS 67421, at \*7 13 (N.D. Cal. Mar. 22, 2015) (defendant subject to personal jurisdiction in California because it sold infringing products to California consumers through an interactive commercial website); *Allstar Mktg Grp., LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1121-23 (C.D. Cal. 2009) (same, and collecting cases); *Valtech, LLC v. 18th Ave. Toys, Ltd.*, No. 14 C 134, 2015 U.S. Dist. LEXIS 17138, at \*8 15 (N.D. Ill. Feb. 12, 2015); *Bose Corp. v. Neher*, No. 09-11479-PBS, 2010 U.S. Dist. LEXIS 143644, at \*9–16 (D. Mass. July 13, 2010).

This letter serves as notice to you that HP is located in California, your sales and interference with HP’s contracts harm HP, and that the effects of your unlawful actions will be felt in California where HP is located if you do not cease your unauthorized sales.

**To avoid litigation, you must immediately and permanently comply with the demands herein, including removing all HP Products from your website and all other unauthorized websites, refraining from selling HP Products, and identifying the source(s) of HP Products you have sold in the past. With respect to products you have sold in the past, you must identify names, locations and contact information for each of your sources of HP Products.**

Please email me at [HP\\_Inc@vorys.com](mailto:HP_Inc@vorys.com) or call me at (614) 324-3164 by no later than 5:00 p.m. Eastern Time on May 17, 2021, to confirm your compliance with these demands.

Sincerely,



T. Blake Finney