

GETTING RID OF THE “CLONE”

THE TERMINOLOGY INACCURATELY DISCREDITS AND DAMAGES THE IMAGING AFTERMARKET

A deliberate strategy is being propagated that impacts many legitimate aftermarket companies. It is entirely wrong, unjust, damaging and discriminatory. It must be stopped. It centers on the use of the word *clone*.

This White Paper:

- focuses on the legitimacy of all non-infringing aftermarket imaging products;
- alerts the industry to the dangers in blindly accepting the narrow and unjust view that anything other than a remanufactured cartridge is wrong;
- publishes the comments of global industry leaders who strongly disagree with the clone definition; and
- urges all within the industry to correctly use the various cartridge definitions and to respect the intellectual property rights of others.



RecyclingTimes Media

by the industry... for the industry...

Definitions

There is no legal definition of the word *clone* that allows its use in the digital printer consumables industry. The word was coined to define those living organisms that have been asexually reproduced from a parent or from ancestral stock. A *clone* is genetically identical to and an exact replica of the progenitor. Dolly the sheep was the first mammal to be cloned in 1996. Her clone was an exact replica, even down to the sheep's DNA level.

If a printer consumable has its own unique workaround solution, is non-infringing and covered under a valid, registered patent of its own, then it cannot—by virtue of its not being an exact replica—be called a *clone*.

Also, if a company invests in its own inventions, patents and intellectual property workarounds to avoid infringement, it can legally offer to sell its products in the marketplace.

Finally, a *patent-free* product is defined as one that does not infringe any existing patent or patents.

A Fuzzy Term

In the last three years, the term *clone* has been used colloquially as a "catch-all" name for compatible or new-built imaging products. It is a "fuzzy" word that covers anything that is not remanufactured. Using this word may be a case of ignorance on the part of some. Or, it could stem from ulterior motives by those seeking a market advantage by disparaging a competitor's new-built product. This includes non-infringing, perfectly legitimate and legal cartridges or components.

Further, the word *clone* lumps together non-infringing with illegal, harmful, infringing and counterfeit products. Clearly, it is inappropriate to use this vague and indistinct term in any context at all.

Accusations and Inaccuracies

Various trade events, component supply companies, and publications use the word *clone* in their communications with the wider industry. One leading publication, as a case in point, implies that all aftermarket products, other than remanufactured,

are bad, illegal and/or should not be supported. It's publisher states, "As to the difference between a *clone* and a patent-free new cartridge: who really cares?"¹ In other words, ANYTHING other than a remanufactured cartridge is a *clone* and should be avoided. Ordinarily, the opinions of a magazine and its publisher should be of their own concern and would not be of any real interest to any other entity legitimately engaged in the imaging aftermarket. Consequently, the publication states it "only supports the remanufacturing industry." This means any other legitimate aftermarket company is not welcome to advertise or report on its legal, new product developments in its pages.

In another case, a "judge and jury" position is taken with the publishing of an article headlined "Apex Makes Chips for Clones."² The article clearly accuses this aftermarket chip-maker (of whom there are many) of engaging in wrongful and/or illegal activity. In fact, Apex Microelectronics' non-infringing cartridge chips have their own workaround solution, are of a different size and shape from the original OEM chip, and are available to remanufacturers and new-built cartridge producers alike. By virtue of its non-infringing chip design it cannot be deemed a *clone* that replicates the OEM product.

Accusations and inaccuracies directed at companies engaged in lawful enterprise are discriminatory. They not only damage legitimate companies that make non-infringing imaging products, but also the industry as a whole. The reputation of any company making replacement parts for any sector of the aftermarket can be destroyed by the use of emotive, inaccurate, denigrating terms such as *clone*. It sets a dangerous precedent this industry needs to recognize and combat.

Infringing Printer Cartridges

The current round of legal disputes between the OEMs and the aftermarket highlights the remanufacture, manufacture, distribution, use, sale, or offer for sale, of any aftermarket printer cartridge that may infringe an OEM patent. This includes remanufactured cartridges. Therefore it is inaccurate to say or imply all remanufactured products are legitimate, and all other

aftermarket supplies are not. The right to repair doctrine does not give either *carte blanche* or “stay out of jail free” rights to remanufacturers.

Only a judge or jury can determine whether or not a product is truly infringing. No industry body, organization or publication is empowered to make that call.

Further, most remanufacturers are engaged—and have been for many years, in all regions across the globe—in sourcing, distributing, reselling and making good profits, legitimately, from new-built products, as part of their aftermarket businesses.

Aftermarket Cartridge Definitions

1. Refurbished Cartridges:

Also known as “remanufactured”, these cartridges are based on the use of a spent OEM core (having had its patents expire after the first authorized sale in the country that issued the patents) and are completely legitimate providing that the replacement parts used to remanufacture that product are, of themselves, non-infringing. Also, the number of replacement parts used to restore the product for reuse cannot be so significant so as to be judged a reconstruction. It is therefore possible to have a patent infringing remanufactured cartridge. If this is the case then expect legal action to be taken by the OEM.

In addition:

- a. any or all components, except the original core, are replaced with reused or new-built component parts;
- b. existing resources are reused making this aftermarket product the best eco-friendly printer cartridge option for the environment;
- c. labeling, packaging and marketing resources correctly identify the products as being an aftermarket, remanufactured cartridge;
- d. determining whether or not the cartridge and its component parts infringe the IPRs of the OEM is the responsibility of the remanufacturer, distributor and sales channel;
- e. those companies found to be involved with

the remanufacture, distribution, and/or sale of infringing cartridges are liable for fines and prosecution.

2. Compatible Cartridges:

It is possible to build a new, non-infringing, patented or patent-free imaging cartridge. Such products have been available in the legitimate imaging aftermarket for many years. In this case the product is perfectly legitimate. No doubt the OEM will evaluate competitive cartridges and if thought to be infringing will take appropriate action, whether immediately after the product release or at any time thereafter. New-built products that do infringe will attract legal action from the OEM in those regions where the OEM holds valid and registered patents.

In addition:

- a. any and all components including the core, may be new-built;
- b. some are made with inferior components making their reuse and remanufacture impossible. This is the least favorable option for the environment;
- c. labeling, packaging and marketing resources correctly identify the products as being an aftermarket compatible cartridge;
- d. compatibles may, or may not, infringe the IPRs of the OEMs. The responsibility lies with manufacturers, distributors and sales channels to ensure they comply;
- e. those companies found to be involved with the manufacture, distribution, and/or sale of infringing cartridges in those regions where patents are registered, are liable for fines and prosecution.

3. Counterfeit Cartridges:

Remanufactured and/or new-built cartridges that infringe OEM patents, trademarks, copyrights or trade dress, and that are sold as original, authentic OEM products, are counterfeits. This is a criminal offense and is not tolerated by either the OEMs or the legitimate imaging aftermarket.

In addition:

- a. remanufactured and/or compatible cartridges that are labeled, packaged and sold, so as to appear to be an OEM cartridge, with the intention to defraud OEM customers, are counterfeits;
- b. those individuals found to be involved with the manufacture, distribution, and/or sale of counterfeit cartridges are liable for prosecution and imprisonment.

A Call to Action

The imaging industry must:

1. cease using the inaccurate and disparaging term *clone* to describe the manufacture of compatible, new-built printer cartridges;
2. refer to compatible, new-built cartridges as just that;
3. identify the aftermarket supply of printer cartridges in terms of:
 - a. non-infringing products (which includes refurbished/remanufactured and those new-built cartridges which have their own workaround and patented or patent free solutions);
 - b. infringing products (which may also include remanufactured, and new-built cartridges);
 - c. counterfeit products (which may also include remanufactured, and new-built cartridges)
4. Support the wider industry (OEMs, remanufacturers

and non-infringing compatible cartridges) by denouncing the wrongful, illegal and harmful practices of infringing and counterfeit cartridge manufacture, remanufacture, distribution and sale.

In Conclusion

The use of the confusing word *clone* has been a catch-all in the printer consumables industry describing anything that is not a remanufactured cartridge. It must stop. It clearly discriminates against those that are smart enough to avoid patents held by the OEM and that bring a new-built, non-infringing product to market. There are many of them and more will come. New-built, non-infringing products are perfectly legitimate and should be made available to the imaging aftermarket worldwide.

The use of the term *clone* must stop. "New-built, non-infringing and patent-free" define a legitimate product. We should use these terms to differentiate the manufacturers and their products.

The question for readers of this White Paper is: "Do you think the fuzzy, catch-all term *clone* is proper or that a more accurate name needs to be chosen to differentiate among legitimate products.

Bibliography:

1. "Editorial", *The Recycler*, Issue 260, 3 July 2014, page 15
2. "Apex Manufactures Chips for Clone Cartridges?" *The Recycler*, Issue 260, 3 July 2014, page 3

Recycling Times informs, educates, and nurtures the global printer consumables industry innovatively through an integrated broadcast, print, digital and social media strategy. In so doing, we honor and respect the intellectual property of all businesses and individuals. Consequently, we take a zero tolerance position to the manufacture, distribution and sale of patent infringing and counterfeit printer cartridges and components.

RT Media, the publishers of *Recycling Times Magazine* supports the legitimate imaging aftermarket. We totally disagree with the term *clone*. We believe there is a legitimate place within this industry for both remanufactured and new-built products, so long as they do not infringe the intellectual property of the original equipment manufacturers (OEMs) and others holding valid patents.

Please participate in debating this white paper position at the upcoming RT Imaging Summits. Please go to www.iRecyclingTimes.com for more details.