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10 Attorneys for Plaintiffs

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 HP INC. AND HEWLETT-
PACKARD DEVELOPMENT
14 COMPANY, L.P.,

15 Plaintiffs,

16 v.

17 WISETA, ZHAICOLOR,
MOOHO, ROHON, SHEENGO,
18 ABOIT, HALOFOX, X-E-
OFFICE, EJET, KEENKLE,
19 IDAHOTONER, DOES 1-10,

20 Defendants.

Case No. 23-cv-344

COMPLAINT FOR:

**1) FEDERAL TRADE DRESS
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION (LANHAM
ACT, 15 U.S.C. § 1125(A));**

**2) COMMON LAW TRADE DRESS
INFRINGEMENT, UNFAIR
COMPETITION, AND
MISAPPROPRIATION;**

**3) FEDERAL FALSE ADVERTISING
(LANHAM ACT, 15 U.S.C.
§ 1125(A)(1));**

**4) CALIFORNIA STATE UNFAIR
COMPETITION (UNDER CAL. BUS. &
PROF. CODE §§ 17200 ET SEQ.);**

**5) CALIFORNIA STATE DECEPTIVE
TRADE PRACTICES (UNDER CAL.
BUS. & PROF. CODE § 17500).**

DEMAND FOR JURY TRIAL

1 Plaintiffs HP Inc. and Hewlett-Packard Development Company, L.P.,
2 (together, “HP”) for their Complaint against Defendants WISETA, ZHAICOLOR,
3 MOOHO, ROHON, SHEENGO, ABOIT, HALOFOX, X-E-OFFICE, EJET,
4 KEENKLE, and IDAHOTONER (collectively, “Defendants”) for trade dress
5 infringement, false advertising, unfair competition and deceptive trade practices, and
6 related causes of action hereby allege upon actual knowledge with respect to
7 themselves and their own acts, and upon information and belief as to all other
8 matters as follows:

9 NATURE OF THIS ACTION

10 1. “I feel SCAMMED!” “100% Misleading,” “Deceptive Packaging
11 NOT HP PRODUCT!” “Don’t be fooled... It is not HP.” “False advertising! The
12 picture on Amazon clearly shows the HP brand ink, but this is NOT from HP.”
13 These are the words of some of the many consumers confused by Defendants—
14 online sellers of off-brand ink and toner who operate behind aliases—into
15 purchasing products made to look like HP Original ink and toner. Defendants’
16 deception is intentional, perpetrated through blatant copying of HP’s established
17 and well-recognized trade dress for its HP Original ink and toner packaging.

18 2. When consumers see a butterfly amid lush plant life on an ink box, the
19 lime-green and black contrast on an XL cartridge package, and the sleek,
20 sophisticated design of the HP toner packaging with HP’s circular blue logo in the
21 corner, they instantly know the ink and toner comes from HP. The trust, goodwill,
22 and brand identity HP has developed over more than eight decades since its
23 founding in 1939 is wrapped up in the familiar look-and-feel of its HP Original ink
24 and toner packaging.

25 3. Rather than using their own brand identity or trying to establish
26 goodwill themselves, Defendants decided to copy HP’s trade dress and lure
27 consumers through look-alike digital images of product packaging and/or actual
28 packaging, passing off their products as HP Original ink and toner. Their tactics

1 are working. Defendants are capitalizing on HP’s reputation, creating consumer
2 confusion in the marketplace, and earning ill-gotten profits.

3 4. Below are merely examples of Defendants’ efforts to imitate the look
4 of HP products in online advertisements.

5
6 XL Series Ink Trade Dress



12 HP Toner Cartridge Packaging

13 Exemplary Infringing Ink Packaging
(Defendant ABOIT)



15 Exemplary Infringing Toner Cartridge
Packaging
(Defendant MOOHO)



20 5. This action is necessary to stop Defendants’ scheme to deceive and
21 prey on consumers through infringement of HP’s highly recognizable trade dress.
22 HP seeks injunctive relief, actual damages, disgorgement of Defendants’
23 wrongfully earned profits, corrective advertising damages, costs, attorneys’ fees,
24 punitive damages, declaratory relief, and other relief as more fully set forth below.

25 **INTRADISTRICT ASSIGNMENT**

26 6. This is an intellectual property action and therefore shall be assigned
27 on a district-wide basis per Civil L.R. 3-2(c).

28 ////

THE PARTIES

1
2 7. Plaintiff HP Inc. is a corporation with a principal place of business
3 located at 1501 Page Mill Road, Palo Alto, California 94304, organized under the
4 laws of Delaware.

5 8. Plaintiff Hewlett-Packard Development Company L.P. (“HPDC”) is a
6 limited partnership with its principal place of business located at 10300 Energy
7 Drive, Spring, Texas 77389, organized under the laws of Texas. HPDC owns the
8 trade dress at issue in this Complaint. HPDC licenses its intellectual property,
9 including the trade dress at issue, to its related companies, including HP Inc. The
10 goodwill of HPDC’s licensees, including use and promotion of the trade dress at
11 issue by HP Inc., inures to the benefit of HPDC.

12 9. Defendants are individuals and business entities of unknown makeup
13 who own and/or operate one or more of the e-commerce stores under at least the
14 seller aliases identified on Exhibit A and/or other seller aliases not yet known to
15 Plaintiffs. Defendants reside and/or operate in the People’s Republic of China or
16 other foreign jurisdictions with lax trademark enforcement systems or redistribute
17 products from the same or similar sources in those locations.

18 10. Whenever in this Complaint, an act or omission by any Defendant is
19 alleged, this allegation shall be deemed to include an allegation that each Defendant
20 acted through its authorized agents, partners, officers, directors, or employees and
21 that such act or omission was authorized by the officers and directors of the
22 corporation, partnership or company.

23 11. The true names and capacities of defendants sued herein as Does 1
24 through 10 are unknown to HP. HP, therefore, sues these defendants by such
25 fictitious names. HP will amend this complaint to allege the true names and
26 capacities of said Doe Defendants when ascertained. Each of these fictitiously
27 named defendants is responsible in some manner for the acts and conduct alleged
28 herein and that such defendants proximately caused HP harm as alleged herein.

JURISDICTION AND VENUE

1
2 12. This is a civil action alleging trade dress infringement, false
3 designation of origin, unfair competition, and false advertising in violation of the
4 Lanham Act, 15 U.S.C. § 1125, common law trade dress infringement, unfair
5 competition, and misappropriation, and deceptive trade practices under California
6 law, including Business & Professions Code §§ 17200 et seq. and Business &
7 Professions Code § 17500.

8 13. This Court has jurisdiction over the subject matter of this action
9 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338(a) and (b), because the claims
10 address federal questions concerning the Lanham Act. This Court has supplemental
11 jurisdiction over HP’s state law claims because those claims are joined with
12 substantially related claims under the Lanham Act. This Court also has
13 supplemental jurisdiction over HP’s state law claims pursuant to 28 U.S.C. §
14 1367(a), because all of HP’s claims arise out of a common nucleus of operative
15 facts.

16 14. This Court has personal jurisdiction over the Defendants because they
17 have conducted substantial business throughout the State of California and
18 attempted to derive financial benefits from residents of the State of California.

19 15. Defendants own and operate ecommerce storefronts on one or more
20 third-party platforms, including Amazon, Walmart, Newegg, and Temu.
21 Defendants advertise and offer for sale products featuring infringing digital product
22 packaging images and product packaging, infringing trade dress to be shipped to
23 addresses in the United States, including to consumers in the State of California and
24 this District. Defendants’ ecommerce storefronts also feature false and misleading
25 statements of fact concerning products advertised and offered for sale in commerce,
26 including about the source and/or origin of Defendants’ products. Defendants’
27 deceptive conduct complained of herein places products into the stream of
28 commerce, with the knowledge or understanding that such products are sold in the

1 State of California.

2 16. Test purchases confirm that each Defendant accepts payment in U.S.
3 dollars and have shipped products or directed the shipping of products purchased
4 from Defendants' infringing ecommerce storefronts to addresses in this District.

5 17. In the alternative, this Court has personal jurisdiction over each
6 Defendant pursuant to Federal Rule of Civil Procedure 4(k)(2) because (1) HP's
7 Lanham Act claims against each Defendant arise out of federal law; (2) Defendants
8 are not subject to jurisdiction in any state courts of general jurisdiction in the
9 United States; and (3) exercising jurisdiction over each Defendant comports with
10 due process given that each Defendant targets United States consumers including
11 by directing advertising of the infringing packaging and distributing product to
12 United States consumers.

13 18. Venue in this Court exists under 28 U.S.C. § 1391(b)(2) as a
14 substantial part of the events giving rise to HP's claims occurred within this
15 District.

16 **FACTUAL BACKGROUND**

17 **HP's Business and Reputation for Quality Innovations**

18 19. Founded in 1939 by Bill Hewlett and Dave Packard in a one-car garage
19 near Stanford University, Hewlett-Packard Company, long known as HP, has
20 epitomized the innovation and entrepreneurial spirit for which Silicon Valley has
21 become renowned.

22 20. HP has been a household name for over half of a century. The HP
23 brand has become synonymous with trust, innovation and high-quality products.

24 21. In 2015, Hewlett-Packard Company separated into two publicly listed
25 companies: HP Inc. and Hewlett Packard Enterprises Company. With the split,
26 Hewlett-Packard Company renamed itself HP Inc. and carried forward the HP
27 brand, its personal computer and printing businesses, and its 75-year legacy of
28 innovation and commitment to excellence.

1 has long been associated with the HP brand.



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7 28. The detailed imagery on HP’s packaging for its HP Original ink and
8 toner cartridges are suggestive of the detail and quality that its HP Original ink and
9 toner cartridges are capable of printing.

10 29. HP launched the newly designed ink and toner cartridge packaging in
11 or about 2009 and 2010, respectively, and has used the same packaging designs to
12 advertise and sell HP Original ink and toner cartridges since its launch.

13 **A. HP’s Original Ink Cartridge Trade Dress**

14 30. In developing its new HP Original ink cartridge packaging, HP
15 specifically selected butterfly and plant-life imagery that had no existing
16 association to printing, printers, or ink products to create a direct connection
17 between the imagery and the HP brand.

18 31. HP packaging for HP Original standard ink cartridges (“Standard
19 Series Ink”) also incorporates the same blue color HP uses in its widely recognized
20 HP logo on the box elements, lettering, and in the vivid, detailed imagery of blue
21 butterflies amid plant life.

22 32. HP packaging for HP Original extra-large and high-yield ink cartridges
23 (“XL Series Ink”) prominently features black and lime-green color contrast, uses
24 the same lime-green color on lettering and box elements alongside complementary
25 green plant life. The XL Series Ink boxes depict detailed imagery of a multi-
26 colored butterfly with glints of blue on its wings resting on vivid, lime-green
27 foliage.

28 /////

1 33. The packaging for HP Original ink cartridges was designed to be bold
2 and eye-catching. The bright colors of the Standard Series Ink and XL Series Ink
3 packaging are set off against a black background with a color coordinated nature
4 scene and distinctive packaging with beveled edges and black side panels (each
5 depicted directly below).



15 34. The inherently distinctive, non-functional appearance of HP's
16 Standard Series Ink product packaging is referred to herein as the "Standard Series
17 Ink Trade Dress."

18 35. One embodiment of the Standard Series Ink Trade Dress is depicted
19 below.



1 36. HP's Standard Series Ink Trade Dress comprises the overall
2 appearance of the product packaging, including but not limited to the shape, color,
3 color combinations, and imagery. Features of the Standard Series Ink Trade Dress
4 include:

5 Bright blue top panel;

6 Bright blue accents calling out text and product features;

7 Black beveled side panels;

8 HP logo, with white stylized letters against a blue circular background,
9 featured in the top left corner of the packaging;

10 Vibrant nature scene showing detailed imagery of butterflies in bright
11 blue; and

12 White call out panel describing features of the ink cartridges.

13 37. The inherently distinctive, non-functional appearance of HP's XL
14 Series Ink product packaging includes at least the following elements and is
15 referred to herein as the "XL Series Ink Trade Dress." One embodiment of the XL
16 Series Ink Trade Dress is depicted below.



1 38. HP's XL Series Ink Trade Dress comprises the overall appearance of
2 the product packaging, including but not limited to the shape, color, color
3 combinations, and imagery. Features of the XL Series Ink Trade dress include:

4 Bright green top panel;

5 Bright green accents calling out text and product features;

6 Black beveled side panels;

7 HP logo, with white stylized letters encompassed in a blue circular
8 background, featured in the top left corner of the packaging;

9 Vibrant green nature scene showing detailed imagery of a butterfly
10 resting on lush, green plant life; and

11 White call-out panel describing features of the ink cartridges.

12 39. HP has used the HP Standard Series Ink Trade Dress and XL Series
13 Ink Trade Dress continuously for nearly 15 years to package, promote, and sell its
14 HP Original ink cartridges.

15 **B. HP's Toner Cartridge Trade Dress**

16 40. Alongside its campaign to redesign its HP Original ink cartridge
17 packaging, also in or about 2008-2009, HP designed new packaging for its HP
18 Original toner cartridges, which it ultimately rolled across its numerous HP
19 Original toner products beginning in or about 2009-2010.

20 41. HP has utilized this new packaging for more than a decade, creating
21 and emphasizing a consistent look-and-feel across its HP Original toner cartridge
22 products.

23 42. As with its HP Original ink cartridge packaging, HP chose for its HP
24 Original toner cartridge packaging unique imagery – the digital list of city names —
25 that had no connection to printers, printing, or toner cartridges. This allowed HP to
26 create a connection between its package imagery and the sophistication it evokes
27 and HP in the minds of customers. The imagery embodies the concepts of global
28 business, cutting-edge technology, and signals that HP Original toner cartridges are

1 suited to print at the highest level and to meet all printing needs—from home or
 2 home office to the largest business. HP underscored this message by setting the
 3 imagery in a clean, black background. Again, HP tied the design back to HP’s
 4 existing corporate brand identity by including the HP blue circular logo and angling
 5 the white/black color contrast to match the angle of the HP logo.

6 43. The inherently distinctive, non-functional appearance of the HP
 7 Original toner packaging includes at least the following elements and is herein
 8 referred to as the “Toner Trade Dress.” One embodiment of the Toner Trade Dress
 9 is shown below:



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 15 44. The HP Toner Trade Dress comprises the overall appearance of the
 16 product packaging, including but not limited to the color, color combinations, and
 17 graphics. Features of the Toner Trade Dress include:

18 Digital display of city names from around the world set on an angle
 19 and fading into the black background;

20 The front panel of the product packaging features a bold diagonal cut,
 21 mimicking the angle of the letters “hp” in HP’s logo, that contrasts the
 22 black background and white product detail information;

23 HP logo, with a blue circle encompassing white stylized letters,
 24 featured in the top left corner of the packaging; and

25 White call-out panel describing features of the toner cartridges.

26 ////

27 45. The combination of elements on HP’s packaging for its ink and toner
 28 cartridges are inherently distinctive, non-functional and easily recognized by

1 consumers as designating HP as the source of the products. Collectively HP’s
 2 Standard Series Ink Trade Dress, XL Series Ink Trade Dress, and Toner Trade
 3 Dress are referred to as the “HP Trade Dress.”

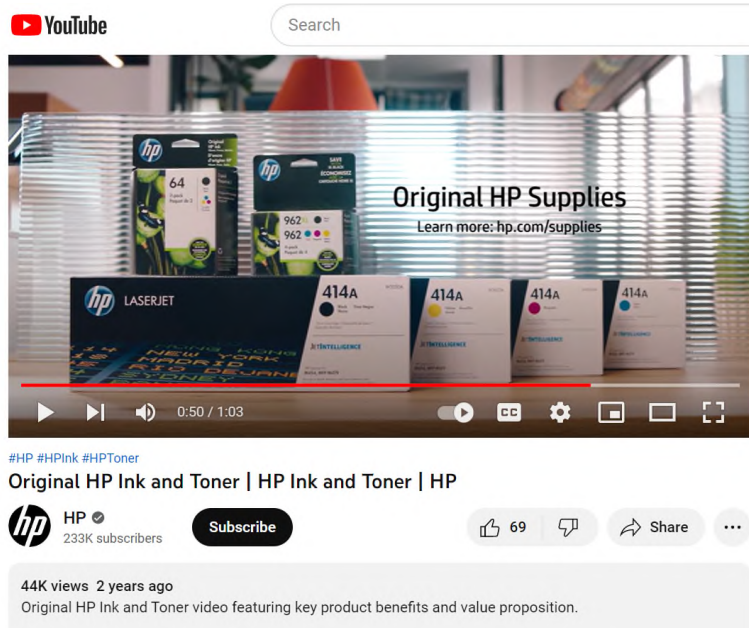
4 **C. The HP Trade Dress Has Acquired Secondary Meaning Through**
 5 **Extensive Promotion and Sales**

6 46. To the extent the HP Trade Dress is not deemed to be inherently
 7 distinctive, it has acquired secondary meaning by virtue of HP’s extensive
 8 promotion of the HP Trade Dress and voluminous sales of HP Original ink and
 9 toner products bearing the HP Trade Dress.

10 47. HP sells HP Original ink and toner cartridges bearing the HP Trade
 11 Dress for use in HP printers. Over nearly 15 years of continuous use, HP has built
 12 strong consumer and general public recognition in the HP Trade Dress.

13 48. HP has extensively advertised the HP Trade Dress, including, without
 14 limitation, on the HP website (www.hp.com), through online and social media, and
 15 in retail stores.

16 49. As one example only, the HP Trade Dress was prominently featured in
 17 the below commercial posted to HP’s YouTube Channel on or around April 17,



1 2020. This video was viewed forty-four thousand times.¹

2 50. HP has continuously used the HP Trade Dress both on its ubiquitous
3 HP Original ink and toner products and in images as part of its deliberate and
4 expansive promotion of those products for nearly 15 years. Customers only need to
5 glance at the packaging design, images, and overall makeup of an ink or toner
6 product to quickly recognize the products as associated with HP. The elements of
7 the HP Trade Dress are so well recognized as an indicator of source for HP at this
8 point, that consumers can identify the origin of the product even without an express
9 reference to “HP.”

10 51. Net revenues from printing supplies comprised 19% of HP’s annual
11 net revenue of \$63 billion for fiscal year 2022.

12 **Defendants’ Infringing and Intentionally Deceptive Acts**

13 **A. Defendants’ Deceptive E-Commerce Stores, Product Pages, and Digital 14 Imagery and Product Packaging**

15 52. Defendants’ digital imagery of product packaging and, in some cases,
16 their actual product packaging are designed to confuse consumers into believing
17 that consumers are purchasing HP Original ink or toner, when they are not.

18 53. Defendants seek to ensnare consumers at a glance, capitalizing on the
19 quick purchasing decisions that consumers make once they recognize the trade
20 dress of the ink or toner they typically use.

21 54. The fact that consumers make these purchases on Amazon and other e-
22 commerce platforms, often on a smart phone or tablet exacerbates the impact of the
23 striking similarity of Defendants’ digital imagery and product packaging to the HP
24 Trade Dress. When consumers use phones or other smaller electronic devices to
25 purchase products, they are viewing images that are smaller, often in lower
26 resolution, with decreased stability and brightness. Whether because of these
27 limitations or the hurried nature of mobile transactions, many consumers may

28 ¹ https://www.youtube.com/watch?v=fejs_yNScls

1 simply see familiar digital images and model numbers and make a purchase.

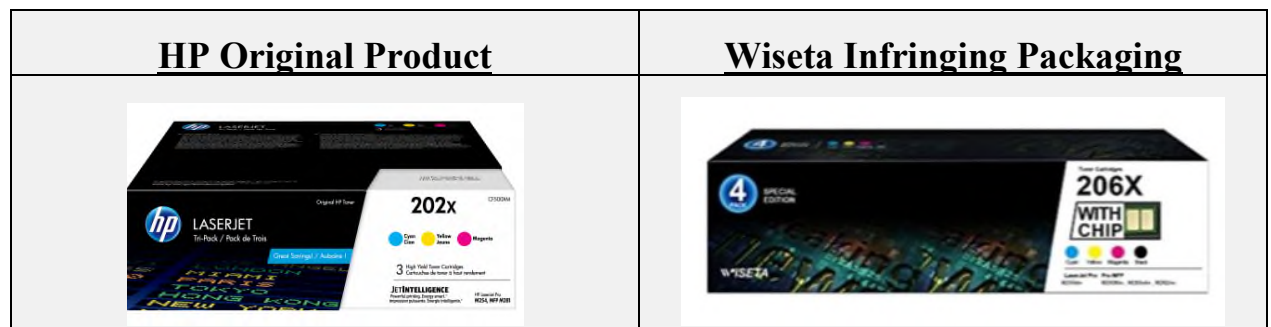
2 55. Defendants know and rely on this purchasing experience. Indeed, in
 3 many cases, Defendants are promoting the sale of ink and toner cartridges using
 4 infringing images of product packaging, even though the actual packaging used to
 5 deliver the product bears no resemblance to that used in advertising. Exhibit B
 6 shows true and correct images comparing the digital images of products Defendants
 7 advertised compared to the actual products Defendants are shipping. As it shows,
 8 Defendants are often employing bait and switch tactics.

9 **i. Defendant WISETA**

10 56. Defendant WISETA sells and/or manufactures ink and toner cartridges
 11 and advertises its products for sale, including but not limited to, on the Amazon
 12 platform.

13 57. A number of Defendant WISETA’s listings on its Amazon storefront
 14 feature digital images of product packaging that directly infringe the XL Series Ink
 15 Trade Dress and Toner Trade Dress. The images used by Defendant WISETA
 16 feature the blue circle logo in the top lefthand with white text inside the circle and
 17 the bold diagonal line with details about the product in white on the right-hand side.

18 58. Depicted directly below is an illustrative side-by-side comparison of
 19 the HP Trade Dress compared to a listing from the WISETA Amazon store front.



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 26 59. In addition to the infringing toner digital imagery of product packaging
 27 and product packaging referenced above, Defendant WISETA also uses digital
 28 imagery of product packaging in its advertising that infringe the HP XL Series Ink

1 Trade Dress.

2 60. Depicted below is a representative advertisement of Defendant
3 WISETA, that prominently features digital imagery of product packaging that
4 infringe the XL Series Ink Trade Dress.

5
6 **WISETA Advertisement from Amazon Storefront**



15 61. Defendant WISETA is attempting to capitalize on the goodwill and
16 well-known nature of the HP Trade Dress.

17 62. WISETA's use of the HP Trade Dress deceived, misled and/or
18 confused consumers who visited the Amazon marketplace intending to buy HP
19 Original ink and toner such that they unwittingly purchased WISETA ink and toner
20 instead. Indeed, numerous verified purchasers of WISETA ink and toner products
21 have complained of just this deception in negative reviews left on Amazon.
22 Depicted below are a few illustrative reviews of WISETA customers taken from the
23 Amazon Platform expressing confusion about the source or association of the
24 digital images associated with the product packaging. Customers highlighted in
25 their negative reviews that "the packaging makes it look as if it is genuine HP ink."
26 and that "though the box looks like HP it's not."

27 /////
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Representative Negative Reviews from WISETA Amazon Listings



J

★★★★☆ **Don't be fooled**

Reviewed in the United States us on January 11, 2023

Color: Black, Cyan, Magenta, Yellow | **Verified Purchase**

All the packaging makes it look as if it is genuine HP Ink. I didn't see the fine print. It is not HP.

One person found this helpful

Helpful

Report abuse



Kenneth Safford

★★★★☆ **Not real HP cartridges!**

Reviewed in the United States us on January 3, 2023

Color: Black, Cyan, Magenta, Yellow | **Verified Purchase**

Even though the box looks like HP it's not. My printer complained but still worked. Print quality is ok.

Helpful

Report abuse



Anthony Neely

★★★★☆ **NOT WHAT IS PICTURED!! SHOWS AN ORIGINAL HP PACAKAGE BUT SENDS GENERIC UNBRANDED INK CARTRIDGES.**

Reviewed in the United States us on January 14, 2023

Color: Black, Cyan, Magenta, Yellow | **Verified Purchase**

SHOWS AN ORIGINAL HP PACAKAGE BUT SENDS GENERIC UNBRANDED INK CARTRIDGES.

Helpful

Report abuse

63. HP has had test purchases made of Defendant WISETA’s ink and toner cartridges that confirm products purchased through Defendant WISETA’s deceptive product pages are shipped to locations in this District.

64. Although Defendant WISETA offers for sale ink and toner cartridges depicted in digital images as bearing strikingly similar product packaging to HP’s XL Series Ink Trade Dress or Toner Trade Dress, following a test purchase, the ink and toner cartridges that arrived bore no resemblance to the products WISETA offered for sale. See below and Ex. B.

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1 68. Below is an example of the HP Original product advertised for sale
2 compared to the packaging advertised by Defendant ZHAICOLOR.
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18 69. The ZHAICOLOR Amazon storefront prominently depicts the
19 infringing digital imagery of product packaging and product packaging and even
20 features products shown in infringing digital packaging images as some of the
21 storefront's "bestsellers."

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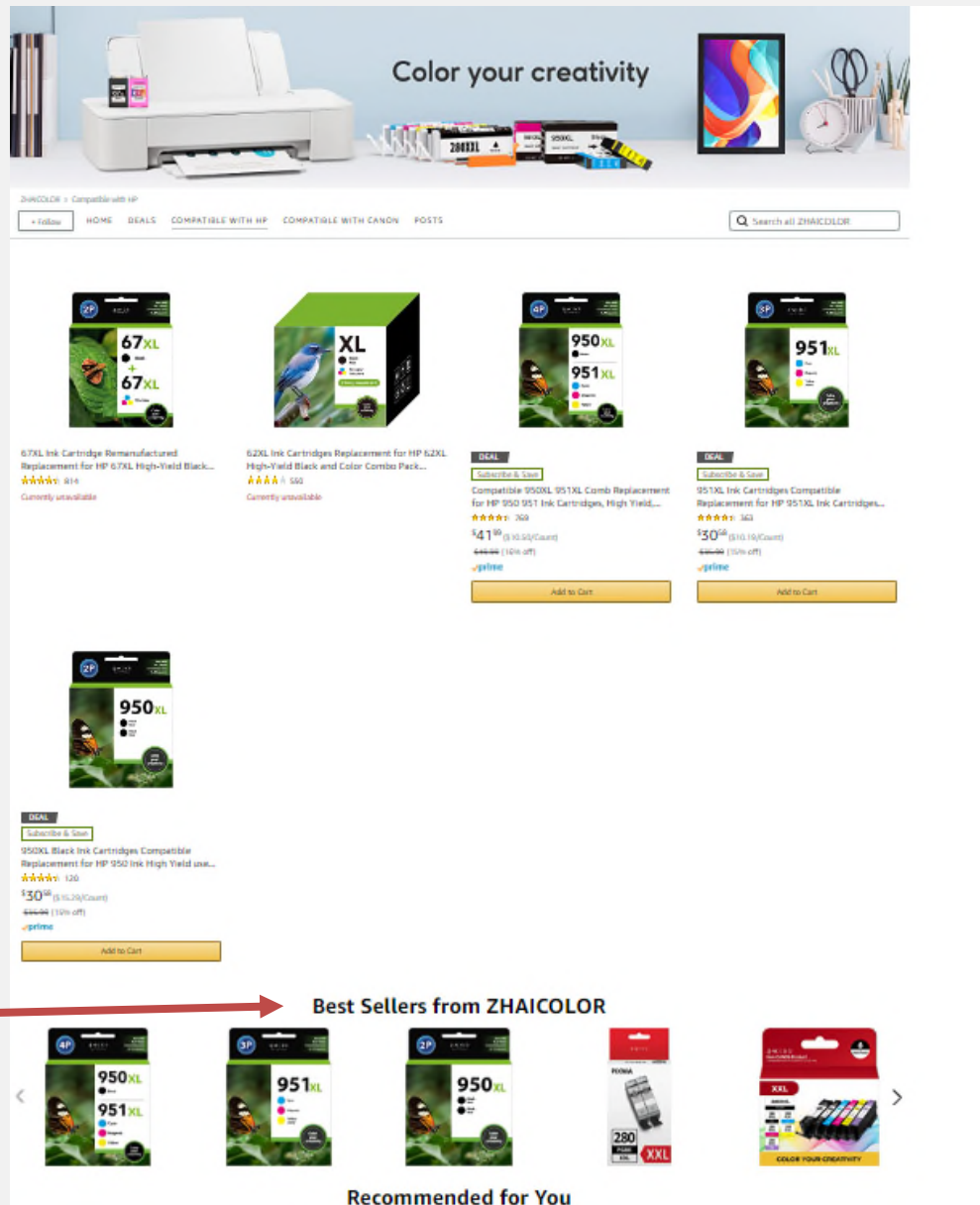
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Capture of ZHAICOLOR Amazon Storefront




70. After receiving their orders, numerous verified purchasers of ZHAICOLOR ink have left reviews on Amazon in which they state that: (1) they intended to and/or believed from the product images that they were purchasing Original HP ink; (2) the product delivered by Defendant ZHAICOLOR is not HP Original ink and is often inferior; and (3) the digital imagery of the product

1 packaging advertised by Defendant ZHAICOLOR is misleading and appears to
 2 depict HP Original ink products.

3 71. Indeed, in numerous negative reviews on the Amazon Platform,
 4 customers warn others not to use the ink after accidentally ordering the cartridges
 5 because the listings are, “100% Misleading.”

6 72. Illustrative reviews from Defendant ZHAICOLOR’s infringing listings
 7 are depicted directly below.

Negative Reviews from ZHAICOLOR Amazon Listings

 Martha Cajigas


★☆☆☆☆ **These cartridges are NOT genuine HP cartridges**


Reviewed in the United States us on December 29, 2022

Verified Purchase

The listing shows pictures for a genuine HP cartridge pack, and I assumed the \$40 price point was the sale price for a set of genuine carts. What I received instead were knock-off cartridges with the artwork from the genuine box on printed on the outer box. If I wanted generic cartridges, I'd gladly purchase them for \$20 from another Amazon seller.

This is unacceptable. Misleading at best, an egregious attempt of deception at worst.



 A. M. Pawlik

★☆☆☆☆ **100% Misleading**

Reviewed in the United States us on October 15, 2022

Verified Purchase

First, the photo of the product is misleading. The photo shows an HP package. What you receive is NOT the same. These cartridges are absolutely not HP products, and this is noted in the product description. The product description says 'compatible'. They are not. Ever since installing, I have had nothing but issues and error messages pertaining to the installation of the off-brand products. I have to eject and reinstall the cartridges every time I want to print something. The cartridges LEAK and make a mess. Save yourself the aggravation and just buy real HP ink cartridges.

21 73. HP has had test purchases made of Defendant ZHAICOLOR ink
 22 cartridges that confirm products purchased through Defendant ZHAICOLOR’s
 23 deceptive product pages are shipped to locations in this District.

24 **iii. Defendant MOOHO**

25 74. Defendant MOOHO sells and/or manufactures ink and toner
 26 cartridges, including but not limited to, on the Amazon platform. Defendant
 27 MOOHO uses digital images of product packaging in its advertising that infringe
 28

1 the HP Trade Dress.

2 75. Defendant MOOHO is a Defendant based in China, that sells its
 3 products online via the Amazon platform, and through other e-commerce channels.

4 76. Below is an example of the HP Original toner product advertised for
 5 sale compared to the packaging advertised by Defendant MOOHO.

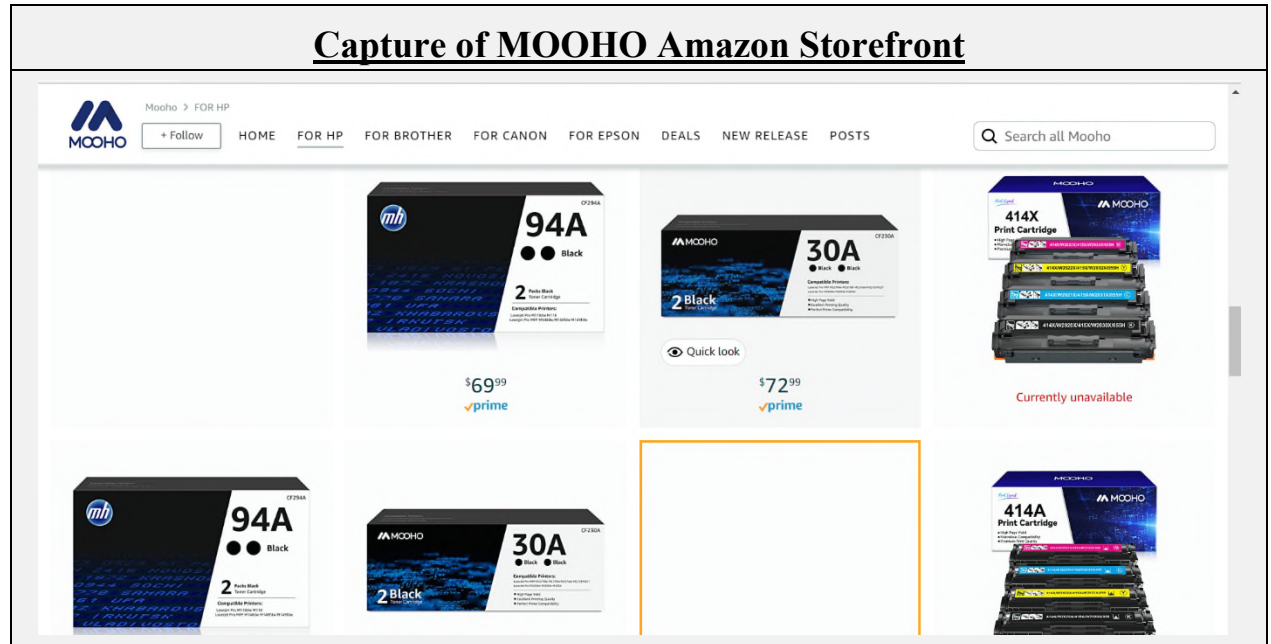


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 12 77. In addition to the infringing toner trade dress, Defendant MOOHO also
 13 advertises ink cartridges for sale using images that infringe the XL Series Ink Trade
 14 Dress. An illustrative screenshot depicting such an advertisement from the
 15 MOOHO Amazon storefront is included directly below.



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 26 78. Depicted below is an additional true and correct screenshot from
 27 Defendant MOOHO's Amazon storefront. Notably, in addition to the overall look-
 28 and-feel of the HP Toner Trade Dress, MOOHO's digital product images use a logo

1 featuring a blue circle encompassing white stylized letters “mh” in the top left-hand
2 corner of the box in a manner that is nearly identical to the HP logo- down to the
3 slanted angle of the “h.”



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16 79. Deceived customers posted reviews on Amazon warning others not to
17 purchase the products in the one-star reviews on the products.

18 80. One reviewer in particular called out the problem of buyers on e-
19 commerce platforms seeing familiar packaging and purchasing without closely
20 reviewing- saying, “[t]his image is an HP cartridge [sic] box with the HP removed. I
21 was moving quickly and did not notice upon ordering...I feel SCAMMED!”

22 /////

23 /////

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Representative Negative Reviews From MOOHO Amazon Listings

From the United States

 TEAUZJE SHELTON

★☆☆☆☆ **DO NOT PURCHASE**

Reviewed in the United States us on November 2, 2022

Color: 1 Black, 1 Cyan, 1 Magenta, 1 Yellow Verified Purchase

This company needs to post their own packaging! This image is an HP cartridge box with the HP removed. I was moving quickly and did not notice upon ordering. I received the cartridges IN COMPLETELY DIFFERENT PACKAGING THAT I IMMEDIATELY KNEW WERE NOT HP - THIS IS WHY YOUR OWN PACKAGING NEEDS TO BE PICTURED! I had a project I needed to get done IMMEDIATELY so I came here to see the reviews. Everyone seemed to be happy with the product so I went ahead and tried it being that I could not wait for another two day delivery. SO HOPEFULLY MY REVIEW WILL HELP SOMEONE AVOID THIS IN THE FUTURE!!!! My printer is now locked up and will not print until I load AUTHENTIC HP CARTRIDGES! I feel SCAMMED! Returning immediately! Never purchasing again! I wish I could give 0 stars but since I cannot, consider the 1 star as a nice gesture!

3 people found this helpful

 kkrea

★☆☆☆☆ **Not original HP ink**

Reviewed in the United States us on August 6, 2022

Verified Purchase

I thought by the picture that it was a reduced price inkjet from HP...well that is what I missed in some of the wording "Compatible"...who knew that meant NOT an official item.

Helpful

Report abuse

81. HP has had test purchases made of Defendant MOOHO's toner cartridges that confirm products purchased through Defendant MOOHO's deceptive product pages are shipped to locations in this District.

82. Although Defendant MOOHO offers for sale toner cartridges depicted in digital images as bearing strikingly similar product packaging to HP's Toner Trade Dress, following a test purchase, the toner cartridge that arrived bore no resemblance to the product MOOHO offered for sale. *See Ex. B.*

iv. Defendant ROHON

83. Defendant ROHON is a defendant based in China who sells and/or manufactures ink and toner cartridges, including but not limited to, on the Amazon platform and other e-commerce platforms. Defendant ROHON uses digital images in its advertising that infringe the HP Trade Dress.

84. Certain elements of the XL Series Ink Trade Dress that Defendant ROHON is copying include, but are not limited to, the bright green top panel, bright green accents calling out text and product features, high-detail image of lush,

1 green plant life, a blue circle with the white, stylized text inside, and the white
 2 callout box with details about the product.

3 85. Below is an example of the HP Original ink product advertised for sale
 4 compared to the packaging advertised by Defendant ROHON.



14 86. Defendant ROHON’s Amazon storefront prominently features these
 15 and other infringing digital ink packaging images.

16 87. Deceived customers highlighted Defendant ROHON’s misleading
 17 conduct in one-star and otherwise negative reviews after purchases from Defendant
 18 ROHON’s Amazon storefront. One reviewer was quick to point to the misleading
 19 nature of the images used, titling their review, “False advertising!”

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Representative Negative Reviews from Defendant ROHON Amazon Listings

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Lori Merchant
 ★☆☆☆☆ **False Description**
 Reviewed in the United States us on January 1, 2023
Verified Purchase
 From the picture and product description I believed I was purchasing HP printer cartridges. The cartridges I received were NOT HP cartridges but NON OEM cartridges. Upon seeing the package labeled NON OEM I immediately requested a refund and returned the package. Buyer Beware! Totally misleading and deceptive description!!

Helpful | Report abuse

Stephanie Vogt
 ★☆☆☆☆ **wasn't genuine hp ink**
 Reviewed in the United States us on January 4, 2023
Verified Purchase
 this is represented as HP and it was not. even my printer gave a message about the the quality is not guaranteed since it's not their product. i never would've bought had i known. hope it at least works because i was desperate and had to use it because i was out of ink at work otherwise i would've returned it

Helpful | Report abuse

Jeanette Kerne
 ★☆☆☆☆ **Not as pictured in photo. Not HP ink.**
 Reviewed in the United States us on January 13, 2023
Verified Purchase
 Photo on line shows HP ink package. Product is not HP product.



tarapie
 ★☆☆☆☆ **False advertising!**
 Reviewed in the United States on January 13, 2023
Verified Purchase
 The picture on Amazon clearly shows the HP brand ink, but this is NOT from HP. They should change the picture because it's misleading!!

20
21 88. HP has had test purchases made of Defendant ROHON’s ink
22 cartridges that confirm products purchased through Defendant ROHON’s deceptive
23 product pages are shipped to locations in this District.

24 **v. Defendant SHEENGO**

25 89. Defendant SHEENGO is a defendant based in China who sells and/or
26 manufactures ink and toner cartridges, including but not limited to, on the Amazon
27 platform and other e-commerce platforms. Defendant SHEENGO uses digital
28 images in its advertising that infringe the HP Trade Dress.

1 90. Certain elements of the XL Series Ink Trade Dress that Defendant
 2 SHEENGO is copying include, but are not limited to, the bright green top panel,
 3 bright green accents calling out text and product features, high-detail image of lush,
 4 green plant life, and the white callout box with details about the product.

5 91. Below is an example of an HP Original ink product advertised for sale
 6 compared to the packaging advertised by Defendant SHEENGO.



19
 20 92. In the negative reviews associated with products on the Amazon
 21 storefront, deceived customers expressed that it was “Deceptive Packaging NOT
 22 HP PRODUCT!”

23 93. Illustrative reviews on the products sold by SHEENGO are depicted
 24 directly below.

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94. HP has had test purchases made of Defendant SHEENGO ink cartridges that confirm products purchased through Defendant SHEENGO's deceptive product pages are shipped to locations in this District.

95. Although Defendant SHEENGO offers for sale ink cartridges depicted in digital images as bearing strikingly similar product packaging to HP's XL Series Ink Trade Dress, following a test purchase, the ink cartridge that arrived bore no resemblance to the products SHEENGO offered for sale. *See Exhibit B.*

vi. Defendant ABOIT

96. Defendant ABOIT is a defendant based in China who sells and/or manufactures ink and toner cartridges, including but not limited to, on the Amazon platform and other e-commerce platforms. Defendant ABOIT uses digital images of product packaging in its advertising and product packaging that infringe the Toner Trade Dress.

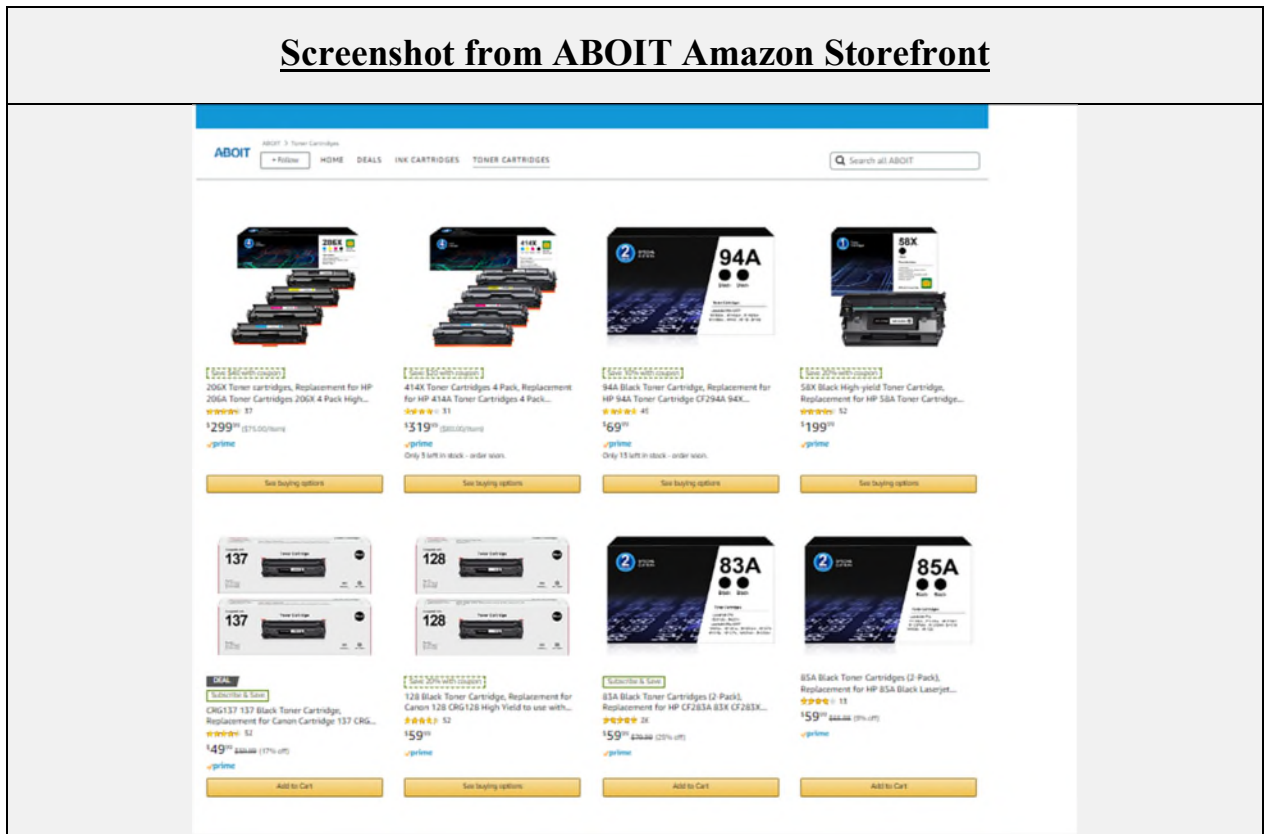
97. Certain elements of the Toner Dress that Defendant ABOIT is copying include, but are not limited to, the blue circle on the lefthand side with stylized, white text inside, a digital display fading into the black background, a diagonal line

1 dividing the white/black portions of the front panel, with the information about the
 2 product.

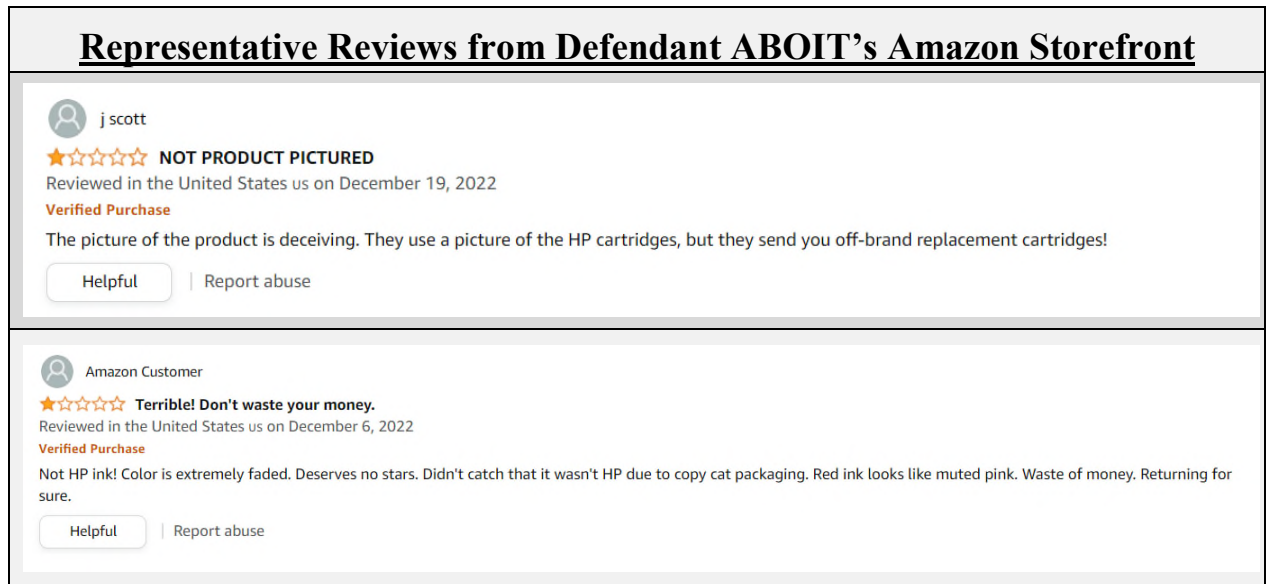
3 98. Below is an example of an HP Original toner product advertised and
 4 offered for sale compared to the packaging advertised by Defendant ABOIT.



13 99. An exemplary screenshot from the Amazon storefront depicting the
 14 infringing digital toner packaging images is directly below.



1 100. Deceived consumers posted a number of negative product reviews on
 2 Amazon, illustrative examples of which are depicted directly below.



13

14 101. HP has had test purchases made of Defendant ABOIT toner cartridges
 15 that confirm products purchased through Defendant ABOIT’s deceptive product
 16 pages are shipped to locations in this District.

17 **vii. Defendant HaloFox**

18 102. Defendant HaloFox sells and/or manufactures ink and toner cartridges
 19 and, based on information provided to the Amazon platform, appears to be based in
 20 China.

21 103. On its Amazon storefront, Defendant HaloFox lists a number of ink
 22 and toner cartridge replacements available for sale, with many of the listings
 23 featuring digital packaging images that are highly similar to the HP Trade Dress.

24 104. Certain elements of the HP Toner Dress that Defendant HaloFox is
 25 copying include, but are not limited to, the bright green top panel, bright green
 26 accents calling out text and product features, high-detail image of a blue-tinted
 27 butterfly resting on lush, green plant life, a blue circle with the white, stylized text
 28 inside, and the white callout box with details about the product.

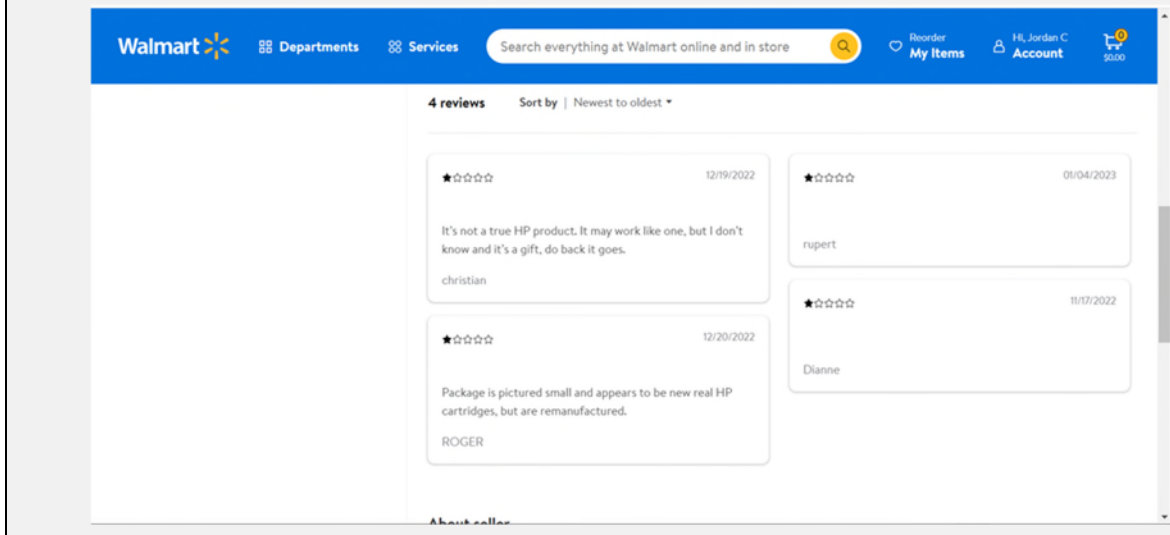
1 105. Depicted below is a side-by-side comparison of an HP Original ink
2 product compared to one of the ink cartridge products that Defendant HaloFox
3 advertises and offers for sale.



15 106. A true and correct screenshot showing Defendant HaloFox's Amazon
16 storefront is shown below, with one example of the packaging featuring the
17 infringing XL Series Ink Trade Dress prominently.

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Exemplary Negative Reviews from HaloFox Walmart Seller's Profile



109. HP made test purchases of Defendant HaloFox ink cartridges that confirm products purchased through Defendant HaloFox's deceptive product pages are shipped to locations in this District.

viii. Defendant X-E-Office

110. Defendant X-E-Office is a Defendant based in China that sells and/or manufactures toner cartridges and advertises those toner cartridges for sale, including on the Amazon Platform, as well as through other e-commerce platforms.

111. Defendant X-E-Office uses digital images in its advertising and product pages that infringe the Toner Trade Dress.

112. Certain elements of the Toner Dress that Defendant X-E-Office is copying include, but are not limited to, a digital display of city names from around the world set on an angle and fading into the black background, the blue circle on the lefthand side with white text inside, a diagonal cut that contrasts the black background and white product detail information.

113. Below is an example of HP Original toner product advertised and offered for sale compared to the digital images of packaging advertised by

1 Defendant X-E Office.



7 114. At least one deceived customer who purchased a toner cartridge from
 8 X-E Office explained “I bought this thinking it was an HP product and it is not. IT
 9 states that it is BUT IT IS NOT.”



18 115. HP has had test purchases made of Defendant X-E Office toner
 19 cartridges that confirm products purchased through Defendant X-E Office’s
 20 deceptive product pages are shipped to locations in this District.

21 116. Although Defendant X-E Office offers for sale toner cartridges
 22 depicted in digital images as bearing strikingly similar product packaging to HP’s
 23 Toner Trade Dress, following a test purchase, the ink and toner cartridge that
 24 arrived bore no resemblance to the products X-E Office offered for sale. *See*
 25 Exhibit B.

26 **ix. Defendant EJET**

27 117. Defendant EJET is a Defendant based in China that sells and/or
 28 manufactures ink cartridges and advertises those ink cartridges for sale, including

1 on the Amazon Platform. As well as through other e-commerce platforms.

2 118. Defendant EJET uses digital images in its advertising that infringe the
 3 XL Series Ink Trade Dress.

4 119. Certain elements of the XL Series Ink Trade Dress that Defendant
 5 EJET is copying include, but are not limited to, a bright green top panel, bright
 6 green accents calling out text and product features, a vibrant green nature scene
 7 showing detailed images a butterfly resting on lush, green plant life, and a white
 8 callout panel describing featuring details about the ink cartridges.

9 120. Below is an example of the HP Original ink product advertised and
 10 offered for sale compared to the digital packaging advertised by Defendant EJET.
 11



12 121. A true and correct screenshot showing Defendant EJET’s Amazon
 13 storefront is shown below, with two images of the digital packaging images
 14 prominently depicting the infringing HP XL Series Ink Trade Dress.
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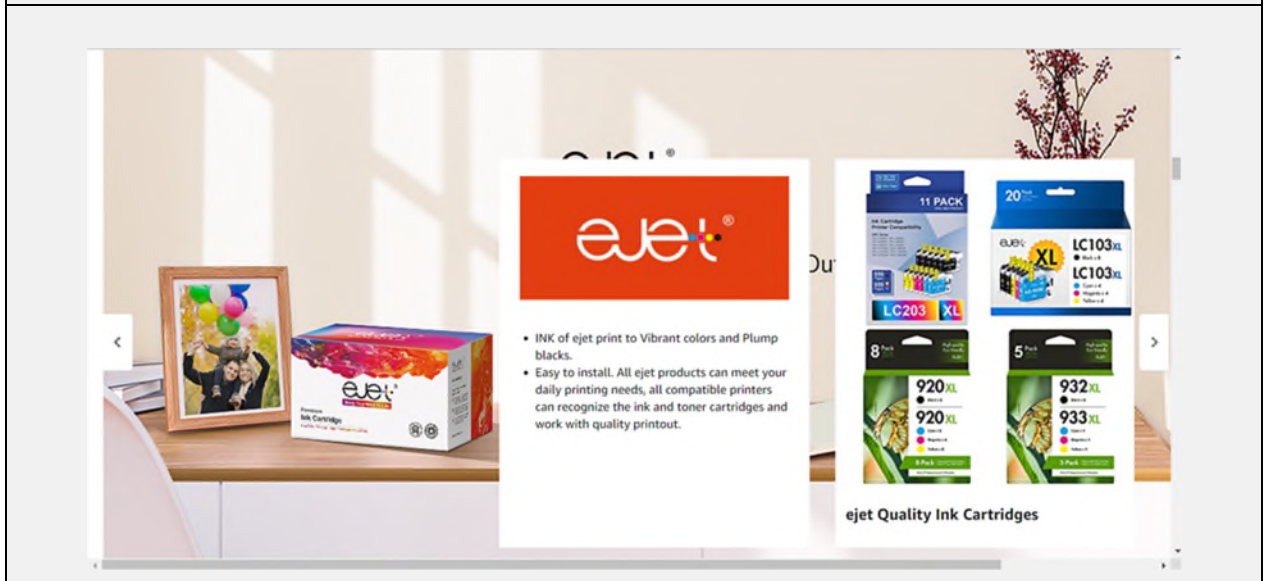
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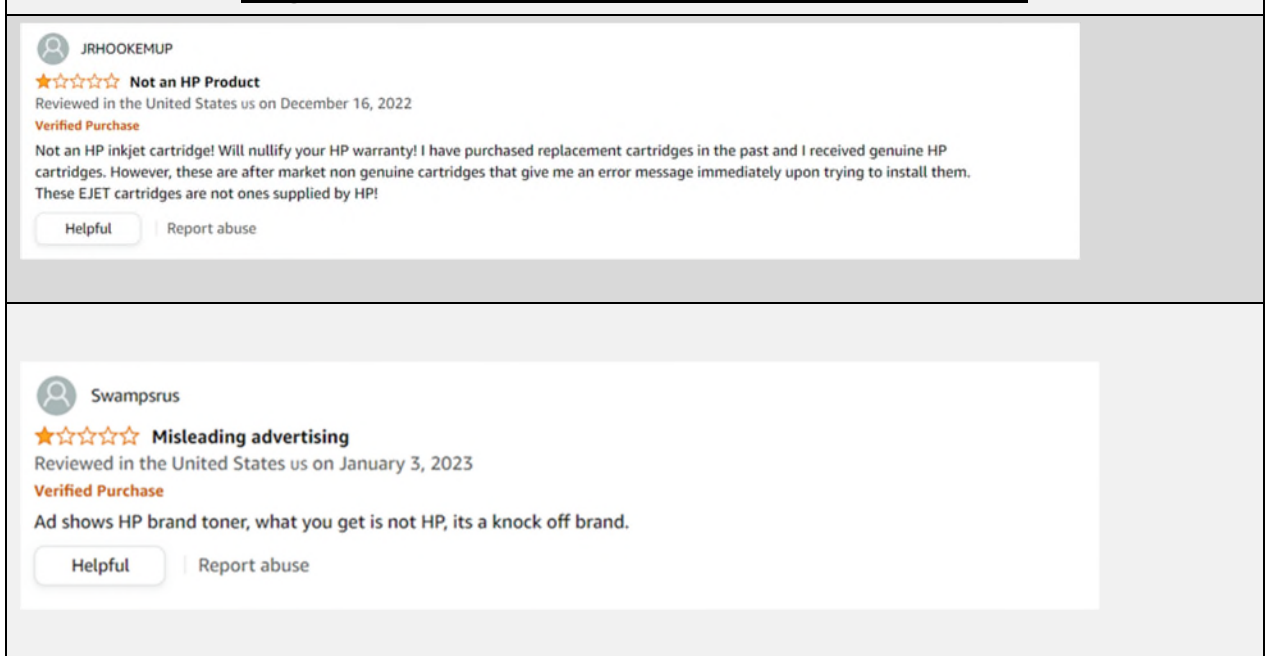
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Representative Advertisement from EJET Amazon Storefront



122. Illustrative negative reviews from customers after purchasing products featuring Defendant EJET’s infringing packaging imagery are depicted directly below. Customers identified Defendant EJET as providing “misleading advertising.”

Negative Reviews from EJET Amazon Storefront



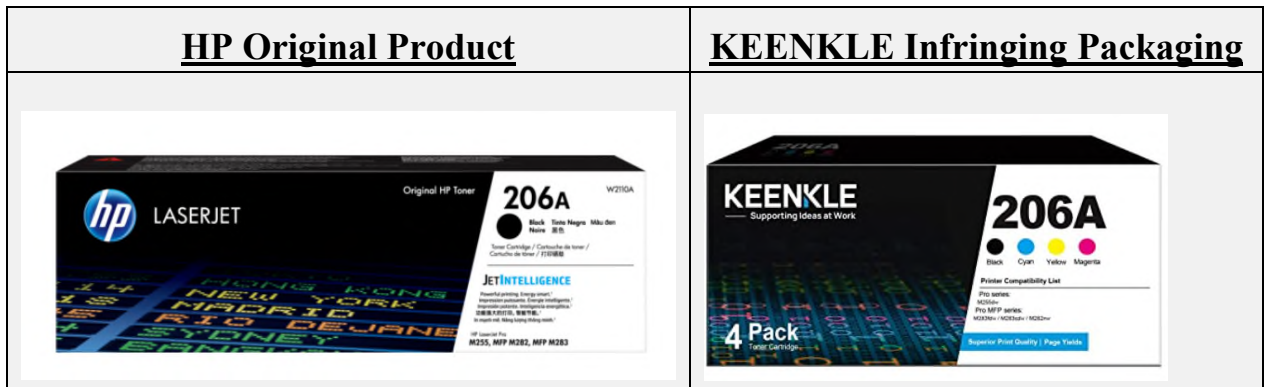
1 123. HP has had test purchases made of Defendant EJET’s toner cartridges
 2 that confirm products purchased through Defendant EJET’s deceptive product
 3 pages are shipped to locations in this District.

4 **x. Defendant KEENKLE**

5 124. Defendant KEENKLE is a Defendant based in China that sells and/or
 6 manufactures ink and toner cartridges and advertises those ink and toner cartridges
 7 for sale, including on the Amazon Platform as well as through other e-commerce
 8 platforms.

9 125. Defendant KEENKLE uses digital images in its advertising that
 10 infringe the HP Trade Dress.

11 126. Below is an example of the HP Original toner product advertised for
 12 sale compared to the digital packaging image advertised by Defendant KEENKLE.



21 127. The KEENKLE Amazon storefront prominently features infringing
 22 digital images of toner packaging.

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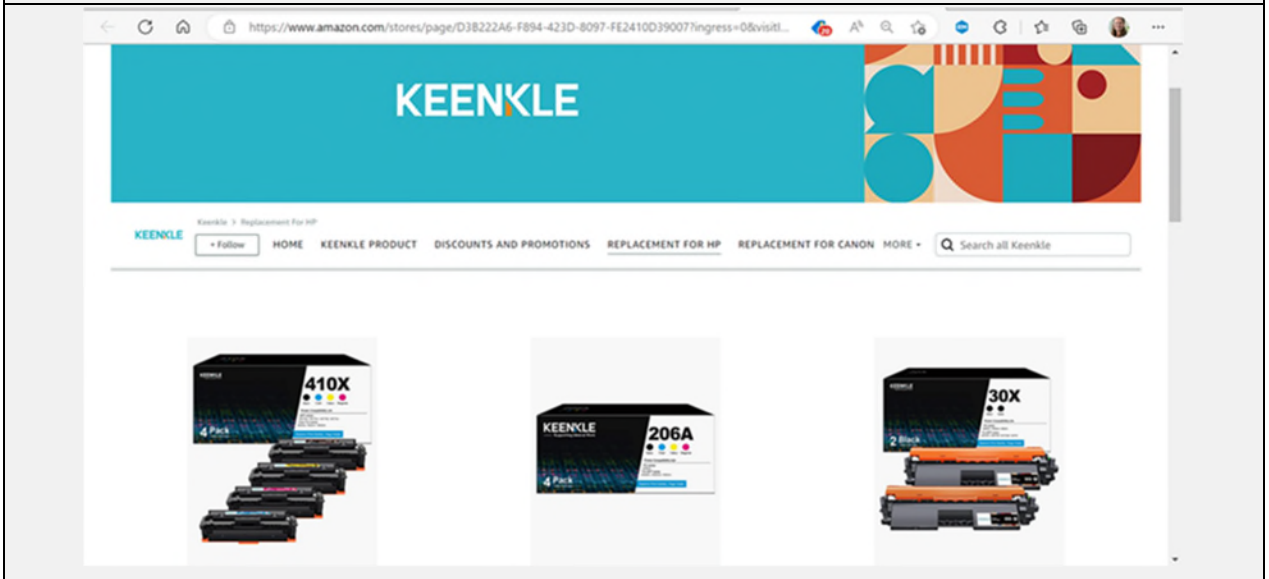
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Capture of Keenkle Amazon Storefront



128. Even before ordering, consumers called out the misleading packaging, asking as a question on one of Defendant KEENKLE’s listings, “Are they genuine hp toner? or a compatible one? The main picture confuses me.” Another reviewer confirms, “NOT HP toner.”

Representative Reviews and Questions from KEENKLE Amazon Storefront

Plunks
 ★★★★★ **Not HP toner**
 Reviewed in the United States us on January 14, 2023
Verified Purchase
 Does not have HP printer chip. Product does not work.
 Helpful | Report abuse

Are they genuie hp toner? or a compatible one? the main picture confuses me.
 It's a compatible toner. Worked just fine in my printer.
 By Amazon Customer on May 17, 2022
 See more answers (1)

/////
/////

1 129. HP has had test purchases made of Defendant KEENKLE toner
2 cartridges that confirm products purchased through Defendant KEENKLE's
3 deceptive product pages are shipped to locations in this District.

4 130. Although Defendant KEENKLE offers for sale toner cartridges
5 depicted in digital images as bearing strikingly similar product packaging to HP's
6 Toner Trade Dress, following a test purchase, the ink and toner cartridge that
7 arrived bore no resemblance to the products KEENKLE offered for sale. *See*
8 Exhibit B.

9 **xi. Defendant IDAHOTONER**

10 131. Defendant IDAHOTONER is a Defendant based in China that sells
11 and/or manufactures ink and toner cartridges and advertises those ink and toner
12 cartridges for sale, including on the Amazon Platform as well as through other e-
13 commerce platforms.

14 132. Defendant IDAHOTONER uses digital images of product packaging
15 in its advertising that infringe the HP Standard Series Ink Trade Dress and Toner
16 Trade Dress.

17 133. Below is an example of the HP Standard Series Ink Trade Dress
18 advertised for sale compared to the digital packaging image advertised by
19 Defendant IDAHOTONER.

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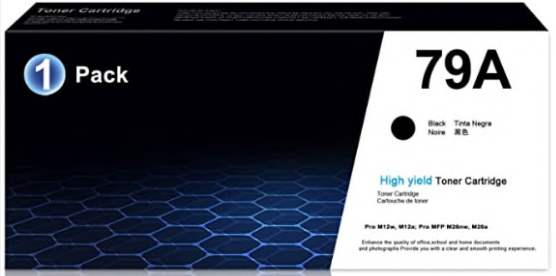
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| <u>Original HP Product</u> | <u>Infringing IDAHOTONER</u> <u>Packaging</u> |
|--|---|
|  <p>The image shows the original HP 96 Black Ink Cartridge packaging. It features a bright blue top panel with the HP logo and the text "PROVEN PERFORMANCE FOR SUPERIOR PRINTS". The main body is white with a blue diagonal line and the number "96" in large black font, with "Black" below it. The bottom section is black with a blue butterfly graphic.</p> |  <p>The image shows the infringing IDAHOTONER 96 Black Ink Cartridge packaging. It features a bright blue top panel with a large white circle containing the number "1" and the text "Proven Reliable High-yield Excellent Print quality". The main body is white with a blue diagonal line and the number "96" in large black font, with "Black" below it. The bottom section is black with a blue and white graphic.</p> |

134. The elements of the HP Standard Series Ink Trade Dress that Defendant IDAHOTONER is copying in its packaging include, but are not limited to, the bright blue top panel, the blue circle in the top lefthand corner with white text, the white diagonal line, with the righthand section in white featuring the product information.

135. Below is an example of the Toner Trade Dress advertised for sale compared to the digital packaging image advertised by Defendant IDAHOTONER.

| <u>Original HP Product</u> | <u>Infringing IDAHOTONER</u> |
|---|--|
|  <p>The image shows the original HP 79A LaserJet Toner Cartridge packaging. It features a black top panel with the HP logo and "LASERJET" text. The main body is white with a blue diagonal line and the number "79A" in large black font, with "Black Toner" below it. The bottom section is black with a blue and white graphic.</p> |  <p>The image shows the infringing IDAHOTONER 79A Toner Cartridge packaging. It features a black top panel with a large white circle containing the number "1" and the text "Pack". The main body is white with a blue diagonal line and the number "79A" in large black font, with "Black Toner" below it. The bottom section is black with a blue and white graphic.</p> |

136. Although Defendant IDAHOTONER offers for sale ink and toner cartridges depicted in digital images as bearing strikingly similar product packaging

1 to the HP Standard Series Ink Trade Dress and the Toner Trade Dress, following a
2 test purchase, the ink and toner cartridge that arrived bore no resemblance to the
3 products KEENKLE offered for sale. *See* Exhibit B.

4 **B. Defendants' Willful Deception of Consumers: Bait and Switch**

5 137. The use of strikingly similar trade dress falsely suggests that the ink
6 and toner cartridges shown in Defendants' advertisements are HP Original ink or
7 toner cartridges.

8 138. Each Defendant's product page conveys the literally false and
9 materially misleading message that the ink or toner they sell is genuine HP Original
10 ink or toner.

11 139. At least Defendants WISETA, X-E Office, KEENKLE, MOOHO have
12 sold and/or are selling toner cartridges using digital images that infringe on HP's
13 Toner Trade Dress to induce buyers into purchasing their product, when in fact
14 their actual packaging looks nothing like the product packaging featured in the
15 digital images on their product listing page. *See* Exhibit B.

16 140. At least Defendants EJET, WISETA, MOOHO, HALOFOX,
17 ZHAICOLOR, ROHON, ABOIT, and SHEENGO seem to have chosen to copy the
18 HP XL Series Ink Trade Dress because the HP Original XL Series Ink cartridges
19 are more expensive due to HP's longer lasting and/or higher-yield ink cartridges.
20 Defendants know that consumers are accustomed to paying higher prices for this
21 series of inks and have chosen to copy that trade dress to capitalize on the higher
22 price point.

23 **HARM TO HP AND ITS BRAND**

24 141. HP has expended substantial time, money, and resources in order to
25 ensure that the HP Trade Dress is widely and exclusively recognized by consumers
26 as being associated with high-quality HP Original ink and toner products. The
27 goodwill and brand recognition associated with the HP Trade Dress is of
28 incalculable value to HP.

1 142. Defendants' actions are likely to cause, have caused and will continue
2 to cause confusion in the minds of relevant consumers regarding the source and
3 quality of Defendants' products. Consumers are confused (or deliberately misled)
4 into believing that they are purchasing HP products when they are instead receiving
5 Defendants' products. That not only deprives HP and its authorized sellers of sales
6 and unjustly lines Defendants' pockets, but also damages HP's consumer goodwill.
7 This is especially true in the typical case where Defendants' products are of inferior
8 quality. And if HP's customers have a poor experience with a product they believe
9 to have originated with HP, they may be unwilling or, at a minimum, less inclined
10 to purchase other HP products in the future.

11 **CLAIMS AND CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **FEDERAL TRADE DRESS INFRINGEMENT, FALSE DESIGNATION OF** 14 **ORIGIN, AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125 (A)**

15 143. HP repeats and realleges each and every allegation contained in the
16 foregoing paragraphs of the Complaint as if set forth herein in full.

17 144. The HP Trade Dress is inherently distinctive, and HP has used and
18 marketed the HP Trade Dress to distinguish and identify its company and to
19 promote its ink and toner cartridges in the marketplace such that, in the minds of
20 the public, the primary significance of the HP Trade Dress is to identify HP as the
21 source of its products.

22 145. HP has acquired substantial goodwill in the HP Trade Dress by virtue
23 of its continued use for nearly 15 years, and the overall fame and recognition of the
24 HP brand. To the extent that the HP Trade Dress is not inherently distinctive, it has
25 gained secondary meaning by virtue of extensive use and promotion.

26 146. Defendants' use of the HP Trade Dress has already caused confusion,
27 mistake, or deception, and constitutes infringement of HP's Trade Dress, false
28 designation of origin and unfair competition in violation of the Lanham Act, 15

1 U.S.C. § 1125(a).

2 147. Defendants were fully aware of HP, the HP ink and toner cartridges,
3 and the HP Trade Dress before copying and using the HP Trade Dress to advertise
4 their non-HP products on the Amazon platform and on other online retail platforms.

5 148. As a result of Defendants' acts of trade dress infringement, false
6 designation of origin, and unfair competition, Defendants have diminished the
7 reputation of HP and its products, and significantly and unfairly benefited in the
8 marketplace, at the expense of HP and unsuspecting customers.

9 149. As a result of Defendants' unlawful conduct, HP has been and
10 continues to be substantially and irreparably harmed. If Defendants' infringement
11 and unlawful acts are permitted to continue, HP will sustain further damage and
12 irreparable injury. Through such unfair acts and use of near identical trade dress,
13 the value of the HP Trade Dress will be diminished or destroyed, for which damage
14 HP cannot be adequately compensated at law.

15 150. Defendants have derived unlawful gains and profits from their
16 infringement of the HP Trade Dress, and Defendants thereby have caused loss and
17 damage to the goodwill in the HP Trade Dress. As a direct and proximate result of
18 Defendants' infringement, HP has suffered and is likely to suffer injury to its
19 business, goodwill, reputation, and profit, all to the damage of HP Trade Dress, in
20 an amount as yet unknown but to be proven at trial.

21 151. HP's damages may be trebled pursuant to Section 35(a) of the Lanham
22 Act, 15 U.S.C. § 1117(a) because Defendants' actions have been committed
23 willfully, with intent to deceive and with full knowledge of HP's prior use of the
24 HP Trade Dress.

25 152. HP is therefore entitled to a preliminary and permanent injunction
26 enjoining and restraining Defendants from using the HP Trade Dress or anything
27 confusingly similar to the HP Trade Dress.

28 ////

1 **SECOND CAUSE OF ACTION**

2 **COMMON LAW TRADE DRESS INFRINGEMENT, UNFAIR**
3 **COMPETITION, AND MISAPPROPRIATION**

4 153. HP repeats and realleges each foregoing paragraph of the Complaint,
5 as if set forth herein in full.

6 154. Defendants have infringed HP's Trade Dress in violation of HP's
7 proprietary rights and have engaged in false and misleading advertising. Such acts
8 constitute trade dress infringement, unfair trade practices, and unfair competition
9 under the common law.

10 155. Defendants' activities described above have at all times been willful
11 and/or knowing.

12 156. As a direct and proximate result of actions of Defendants described
13 above, HP has been damaged and will continue to be damaged.

14 **THIRD CAUSE OF ACTION**

15 **FEDERAL FALSE ADVERTISING UNDER 15 U.S.C. § 1125 (A)**

16 157. HP repeats and realleges each foregoing paragraph of the Complaint,
17 as if set forth herein in full.

18 158. Defendants' actions, as described above, constitute false and misleading
19 descriptions and misrepresentations of fact in commerce which, in commercial
20 advertising and promotion, misrepresent the nature, characteristics, and qualities of
21 Defendants' products and HP's products in violation of Section 43(a)(1)(B) of the
22 Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

23 159. Defendants' activities described above have at all times been willful
24 and/or knowing. In particular, Defendants are engaged in a "bait and switch"
25 scheme whereby their advertising suggests that the consumer will receive HP
26 product(s), when in fact, what they receive bears no resemblance to what was
27 offered for sale.

28 160. As a direct and proximate result of actions of Defendants described

1 above, HP has been damaged and will continue to be damaged.

2 **FOURTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION UNDER**

4 **CAL. BUS. & PROF. CODE § 17200 ET SEQ.**

5 161. HP repeats and realleges each and every allegation contained in the
6 foregoing paragraphs of the Complaint as if set forth herein in full.

7 162. HP repeats and realleges each and every allegation contained in the
8 foregoing paragraphs of the Complaint as if set forth herein in full.

9 163. Defendants' use of and marketing of products via advertisements and
10 images that infringe the HP Trade Dress, as alleged above, constitutes unfair
11 competition and an unlawful business practice in violation of Sections 17200 *et seq.*
12 of the California Business and Professions Code and common law.

13 164. Defendants' unfair competition practices, namely, the adoption and
14 use of the HP Trade Dress, have been willful and have been committed with the
15 knowledge of HP's business and use of its HP Trade Dress.

16 165. Defendants' use of the HP Trade Dress has deceived or is likely to
17 deceive HP's customers and potential customers and/or Defendants' customers and
18 potential customers into believing that Defendant's products and HP's products, or
19 the parties' businesses, are related, and/or that Defendants' products are affiliated
20 with, associated with, and/or sold by HP and/or that HP's products are affiliated
21 with, associated with, and/or sold by Defendants.

22 166. As a result of Defendants' acts of unfair competition, HP has been and
23 continues to be substantially and irreparably harmed. If Defendants' unfair
24 competition is permitted to continue, further damage and irreparable injury will be
25 sustained by HP. Through such unfair acts and use of confusingly similar trade
26 dress, the value of the HP Trade Dress will be diminished or destroyed, for which
27 damage HP cannot be adequately compensated at law.

28 167. Defendants have derived unlawful gains and profits from their acts of

1 unfair competition, as alleged above, and has caused loss and damage to HP, HP's
2 goodwill, and the HP Trade Dress. HP has suffered and is likely to suffer injury to
3 its business, goodwill, reputation, and profit, in an amount as yet unknown but to be
4 proven at trial.

5 **FIFTH CAUSE OF ACTION**

6 **CALIFORNIA STATE DECEPTIVE TRADE PRACTICES**

7 **UNDER CAL. BUS. & PROF. CODE § 17500 ET SEQ.**

8 168. HP repeats and realleges each foregoing paragraph of the Complaint,
9 as if set forth herein in full.

10 169. Defendants are intentionally and in bad faith false and/or misleading
11 advertising practices to pass off their infringing packaging design as products of
12 HP, causing a likelihood of confusion or misunderstanding as to the source,
13 sponsorship, or approval of Defendants' infringing packaging, causing a likelihood
14 of confusion as to Defendants' affiliation, connection, or association with HP, and
15 otherwise damaging the public.

16 170. Defendants' conduct constitutes unfair and deceptive acts or practices
17 in the course of a business, trade, or commerce in violation of the unfair and
18 deceptive trade practices statute of California Business and Professions Code
19 §17500 *et seq.*

20 171. Defendants' deceptive trade practices have caused and are likely to
21 cause substantial injury to the public and to HP.

22 172. HP is therefore entitled to injunctive relief and to recover damages
23 and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, HP respectfully prays that the Court:

26 1. Issue preliminary and permanent injunctive relief against Defendants,
27 and Defendants' officers, agents, representatives, servants, employees, attorneys,
28 successors and assigns, and all others in active concert or participation with

1 Defendants, such that they be enjoined and restrained from:

2 (a) using, imitating, copying, or making any other infringing use of
3 trade dress on packaging or in advertising now or hereafter that is
4 confusingly similar or identical to the HP Trade Dress in connection
5 with ink or toner cartridges or related printing materials;

6 (b) manufacturing, assembling, producing, distributing, offering for
7 distribution, circulating, selling, offering for sale, advertising,
8 importing, promoting, or displaying any simulation, reproduction,
9 counterfeit, copy, or colorable imitation of the HP Trade Dress or any
10 trade dress/trademark confusingly similar thereto;

11 (c) engaging in any other activity constituting an infringement of the HP
12 Trade Dress, or of HP's rights in, or right to use or to exploit the HP Trade
13 Dress; and

14 (d) assisting, aiding, or abetting any other person or business entity
15 in engaging in or performing any of the activities referred to in
16 subparagraphs (a) through (c) above;

17 2. Order that Defendants, and those in active concert in with them, hold in
18 trust, as constructive trustees for the benefit of HP, any and all profits obtained from
19 the marketing and/or provision of Defendants' goods under the HP Trade Dress;

20 3. Order directing each Defendant to withdraw, retract, and/or destroy as
21 applicable all advertisements, commercials, and other materials containing: (1) any
22 of the false or misleading statements complained of herein; (2) any false, misleading,
23 or deceptive statements regarding or related to the HP Trade Dress; and (3) any
24 infringing packaging;

25 4. Order Defendants to pay HP's damages and Defendant's profits
26 pursuant to 15 U.S.C. § 1117(a) for Defendant's willful violation of the HP Trade
27 Dress, along with punitive and exemplary damages;

28 5. Order Defendants to pay to HP pre-judgment interest, post-judgment

1 interest, the costs of this action, and the reasonable attorneys' fees incurred in
2 prosecuting this action; and

3 6. Grant HP such other and additional relief authorized by Section 1117 or
4 as is just and proper.

5
6 Dated: January 23, 2023

DLA PIPER LLP (US)

7
8 By: /s/ Melissa Reinckens

9 Melissa Reinckens
10 Jane W. Wise
11 Jordan Chisek
12 DLA PIPER LLP (US)

13 David H. Kramer
14 Jordan R. Jaffe
15 WILSON SONSINI GOODRICH &
16 ROSATI

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Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

HP demands a trial by jury as to all issues so triable.

Dated: January 23, 2023

DLA PIPER LLP (US)

By /s/ Melissa Reinckens

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