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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FREI ENTERPRISES, INC. d/b/a INK GENIE,

Plaintiff,

v.

HP INC.,

Defendant.

HP INC. and HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,

Counterclaim Plaintiffs,

v.

FREI ENTERPRISES, INC. d/b/a INK GENIE,

Counterclaim Defendant.

Case No. 2:21-cv-14209

JURY TRIAL DEMANDED

HP INC.'S ANSWER TO COMPLAINT

Defendant HP Inc. (“HP”), through counsel, states as follows for its Answer to the Complaint (Doc. 1) filed by Frei Enterprises, Inc. d/b/a Ink Genie (“Ink Genie”):

ANSWER TO “NATURE OF ACTION”

1. HP denies the allegations contained in Paragraph 1 of the Complaint.
2. HP admits that Ink Genie operates a website located at www.inkgenie.com through which it advertises, offers, and sells ink and toner cartridges. HP denies the remaining allegations contained in Paragraph 2 of the Complaint.
3. HP denies the allegations contained in Paragraph 3 of the Complaint.
4. HP denies the allegations contained in Paragraph 4 of the Complaint.
5. HP denies the allegations contained in Paragraph 5 of the Complaint.
6. HP denies the allegations contained in Paragraph 6 of the Complaint.
7. HP states that the contents of the May 10, 2021 letter attached as Exhibit A to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 7 of the Complaint.
8. HP states that the contents of the May 10, 2021 letter attached as Exhibit A to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 8 of the Complaint.
9. HP states that the contents of the July 6, 2021 letter attached as Exhibit B to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 9 of the Complaint.

10. HP states that the contents of the July 6, 2021 letter attached as Exhibit B to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 10 of the Complaint.

11. HP denies the allegations contained in Paragraph 11 of the Complaint.

12. HP denies the allegations contained in Paragraph 12 of the Complaint.

ANSWER TO “JURISDICTION AND VENUE”

13. Paragraph 13 is a legal conclusion to which no response is required. To the extent a response is required, HP denies the allegations contained in Paragraph 13 of the Complaint.

14. Paragraph 14 is a legal conclusion to which no response is required. To the extent a response is required, HP denies the allegations contained in Paragraph 14 of the Complaint.

15. Paragraph 15 is a legal conclusion to which no response is required. To the extent a response is required, HP denies the allegations contained in Paragraph 15 of the Complaint.

ANSWER TO “THE PARTIES”

16. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 16 of the Complaint and therefore denies same.

17. HP admits that Ink Genie procures, advertises, markets, promotes, offers for sale, and sells ink and toner products to the public through the website www.inkgenie.com. HP denies that Ink Genie’s actions are legal, and denies the remaining allegations contained in Paragraph 17 of the Complaint.

18. HP admits the allegations contained in Paragraph 18 of the Complaint.

19. HP admits the allegations contained in Paragraph 19 of the Complaint.

20. HP admits the allegations contained in Paragraph 20 of the Complaint.

21. HP admits that Ink Genie advertises and sells ink and toner products using and bearing HP trademarks that are registered with the United States Patent and Trademark Office and that appear, to the extent possible to determine from the pictures posted on the Ink Genie website, to utilize HP trade dress in its packaging.

22. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 22 of the Complaint as stated, and therefore denies same.

23. HP admits that HP ink and toner products are available for purchase in New Jersey, it but lacks knowledge or information sufficient to identify the “products at issue in this lawsuit” without physical inspection of the products except to state that Ink Genie is unlawfully utilizing HP trademarks to sell products Ink Genie identifies as HP ink and toner products on its website.

24. HP admits the allegations contained in Paragraph 24 of the Complaint.

ANSWER TO “STATEMENT OF FACTS”

25. HP admits that Ink Genie advertises, markets, promotes, offers for sale, and sells ink and toner products to the public through the website www.inkgenie.com. HP denies that Ink Genie’s actions are legal, and denies the remaining allegations contained in Paragraph 25 of the Complaint.

26. HP admits that Ink Genie procures, advertises, markets, promotes, offers for sale, and sells HP-branded ink and toner cartridges. HP denies that these products are “authentic and genuine,” denies that Ink Genie’s actions are legal, and denies the remaining allegations contained in Paragraph 26 of the Complaint.

27. HP denies the allegations contained in Paragraph 27 of the Complaint.

28. HP denies the allegations contained in Paragraph 28 of the Complaint.

29. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 29 of the Complaint and therefore denies same.

30. HP admits that there are photographs of what appear to be HP-branded products on Ink Genie's website located www.inkgenie.com. HP lacks the knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 30 of the Complaint and therefore denies same.

31. HP denies the allegations contained in Paragraph 31 of the Complaint.

32. HP admits that some of the products listed on www.inkgenie.com are in packaging that bears HP's trademarks and that appears to be HP trade dress packaging. HP denies the remaining allegations contained in Paragraph 32 of the Complaint.

33. HP admits that some of the products listed on www.inkgenie.com bear HP's trademarks, and appear to utilize HP copyright and trade dress. HP denies the remaining allegations contained in Paragraph 33 of the Complaint.

34. HP denies that Ink Genie's actions as to HP-branded products is lawful. HP otherwise lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 34 of the Complaint and therefore denies same.

35. HP denies the allegations contained in Paragraph 35 of the Complaint.

36. HP denies the allegations contained in Paragraph 36 of the Complaint.

37. HP admits that the statement "Ink Genie® is an independent ink and toner reseller and is not affiliated with HP. This allows us to offer original, brand name ink and toner cartridges at below retail prices" appears on www.inkgenie.com. HP denies the remaining allegations contained in Paragraph 37 of the Complaint.

38. HP denies the allegations contained in Paragraph 38 of the Complaint.

39. HP denies the allegations contained in Paragraph 39 of the Complaint.

40. HP denies the allegations contained in Paragraph 40 of the Complaint.

41. HP admits that the statement “Every HP product that Ink Genie® offers is a genuine OEM product” appears on www.inkgenie.com. HP denies the remaining allegations contained in Paragraph 41 of the Complaint.

ANSWER TO “DEFENDANT’S WRONGFUL ACTIVITIES”

42. HP lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 42 of the Complaint and therefore denies same.

43. HP admits that, to promote and protect HP’s family of brands, numerous trademarks have been registered with the United States Patent and Trademark Office. Trademarks at issue in this lawsuit include, but are not limited to, HP® (U.S. Trademark Registration Nos. 1,840,215 and 4,272,548), and HP admits that these trademarks appear on the packaging of HP products. HP denies the remaining allegations contained in Paragraph 43 of the Complaint.

44. HP admits that the designs and textual material appearing on HP-branded products are entitled to copyright protection.

45. HP admits the allegations contained in Paragraph 45 of the Complaint.

46. HP admits that it allows its ink and toner products to be purchased by end-user consumers in the United States only from HP itself (through direct sales it makes to consumers) or from sellers who are expressly authorized by HP to sell HP products, which include authorized distributors, authorized resellers, and other authorized parties (collectively, “Authorized Partners”). HP allows Authorized Partners to sell HP products in approved channels only and requires Authorized Partners to abide by agreements, policies, and other rules that impose requirements

relating to quality controls, customer service, and other sales practices. HP denies the remaining allegations contained in Paragraph 46 of the Complaint.

47. HP denies the allegations contained in Paragraph 47 of the Complaint.

48. HP lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 48 of the Complaint and therefore denies same.

49. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 49 of the Complaint and therefore denies same.

50. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 50 of the Complaint and therefore denies same.

51. Paragraph 51 is a legal conclusion to which no response is required. To the extent a response is required, HP denies the allegations contained in Paragraph 51.

52. Paragraph 52 is a legal conclusion to which no response is required. To the extent a response is required, HP denies the allegations contained in Paragraph 52.

53. HP denies the allegations contained in Paragraph 53 of the Complaint.

54. HP denies the allegations contained in Paragraph 54 of the Complaint.

55. HP states that the contents of its May 10, 2021 letter attached as Exhibit A to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 55 of the Complaint.

56. HP states that the contents of its May 10, 2021 and July 6, 2021 letters attached as Exhibits A and B to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 56 of the Complaint.

57. HP denies the allegations contained in Paragraph 57 of the Complaint.

58. HP states that the contents of the May 10, 2021 letter attached as Exhibit A to the Complaint speak for themselves. HP denies the remaining allegations contained in Paragraph 58 of the Complaint.

ANSWER TO COUNT I

59. HP incorporates its admissions, denials, and averments as if fully set forth herein.

60. HP admits the allegations contained in Paragraph 60 of the Complaint.

61. HP denies the allegations contained in Paragraph 61 of the Complaint.

62. HP denies the allegations contained in Paragraph 62 of the Complaint.

63. HP admits the allegations contained in Paragraph 63 of the Complaint.

64. HP admits the allegations contained in Paragraph 64 of the Complaint.

65. HP admits the allegations contained in Paragraph 65 of the Complaint.

66. HP admits the allegations contained in Paragraph 66 of the Complaint.

67. HP admits the allegations contained in Paragraph 67 of the Complaint.

68. HP admits the allegations contained in Paragraph 68 of the Complaint.

69. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 69 of the Complaint and therefore denies same.

70. HP lacks the knowledge or information sufficient to admit or deny the allegations contained in Paragraph 70 of the Complaint and therefore denies same.

71. HP denies the allegations contained in Paragraph 71 of the Complaint.

ANSWER TO “PRAYER FOR RELIEF”

72. HP denies the allegations contained in the WHEREFORE clause of the Complaint.

73. HP denies each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

74. The Complaint fails to state a claim upon which relief can be granted.

75. Ink Genie's claims are barred by its own unlawful conduct, including its infringement upon HP's trademarks, its unfair competition, and its false advertising, including, among other things, its illegal sale of HP products without HP's permission.

76. Ink Genie's claims are barred, in whole or in part, by its failure to mitigate its damages, if any.

77. Ink Genie's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

78. Ink Genie's claims are barred because HP's actions are not the proximate cause of any alleged harm to Ink Genie.

79. HP reserves the right to assert additional defenses that may become available throughout the course of this action and upon the completion of discovery.

WHEREFORE, HP requests that this Court dismiss Ink Genie's Complaint with prejudice and award to HP costs, attorneys' fees, and other expenses, and any other relief that this Court may deem just and proper.

COUNTERCLAIMS

In addition to the Answer and Affirmative Defenses stated above, HP Inc. and Hewlett-Packard Development Company, L.P. (collectively referenced in these Counterclaims as “HP”) bring Counterclaims against Ink Genie for: trademark infringement in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1125; unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); common law trademark infringement and unfair competition; and tortious interference with contracts. These claims arise from Ink Genie’s misappropriation of HP’s trademarks in connection with Ink Genie’s unlawful and unauthorized advertisement and sale of HP®-brand products on the Internet, including the sale of non-genuine products bearing HP’s trademarks. In support of its Counterclaims, HP alleges as follows:

PARTIES

1. Counterclaim-Plaintiff HP Inc. is a corporation, organized under the laws of Delaware, with its principal place of business located at 1501 Page Mill Road, Palo Alto, California 94304.
2. Counterclaim-Plaintiff Hewlett-Packard Development Company, L.P. (“HPDC”) is a limited partnership, organized under the laws of Texas, with its principal place of business located at 11445 Compaq Center Drive West, Houston, Texas 77070.
3. Counterclaim-Defendant Frei Enterprises Inc d/b/a Ink Genie (“Ink Genie”) is a corporation organized under the laws of New Jersey. Upon information and belief, Ink Genie’s principal place of business is located in Springfield, New Jersey. Ink Genie operates an e-commerce website located at www.inkgenie.com (the “Ink Genie Website”). Ink Genie sells infringing products bearing HP’s trademarks through the Ink Genie Website. Ink Genie also

advertises the Ink Genie Website through accounts on outside websites, including through a page on www.facebook.com (“Facebook”) located at <https://www.facebook.com/InkGenie/>.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over HP’s counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, and 1367. HP’s federal counterclaims are predicated on 15 U.S.C. § 1114 and 15 U.S.C. 1125(a), and its claims arising under state law are substantially related to its federal claims such that they form part of the same case or controversy under Article III of the United States Constitution.

5. This Court has general personal jurisdiction over Ink Genie because Ink Genie is a resident of New Jersey.

6. Venue is proper under 28 U.S.C. § 1391(b)(1) because Ink Genie is located in this district and state.

FACTUAL ALLEGATIONS

HP and Its Trademarks

7. HP markets and sells high quality products including laser and inkjet printers, scanners, copiers and fax machines, personal computers, workstations, storage solutions, and printing supplies and accessories. HP sells its products worldwide under the HP® brand name. At issue in the present lawsuit are HP’s printer ink and toner products (hereinafter referenced as “HP Products”).

8. HP allows HP Products to be purchased by end-user consumers in the United States only from HP itself (through direct sales it makes to consumers) or from sellers who are expressly authorized by HP to sell HP Products, which include authorized distributors, authorized resellers, and other authorized parties (collectively referenced hereinafter as “Authorized Partners”).

9. HP allows Authorized Partners to sell HP Products in approved channels only and requires Authorized Partners to abide by agreements, policies, and other rules that impose requirements relating to quality controls, customer service, and other sales practices (collectively, the “HP Rules”). Authorized Partners must also undergo vetting by HP and satisfy various criteria to be approved as Authorized Partners in the first place.

10. HP devotes a significant amount of time, energy, and resources toward protecting the value of its brand, products, name, and reputation. By allowing end-user consumers to purchase HP Products only from HP itself or from Authorized Partners who are required to follow the quality controls and other requirements in the HP Rules, HP ensures that consumers receive HP Products that are subject to its quality controls and maintains the integrity and reputation of the HP® brand. In the highly competitive printing supplies and accessories market, quality and customer service are a fundamental part of a consumer’s decision to purchase a product. It is also particularly important for HP to build trust and establish repeat customers through sales of high quality products because, in the printing supplies and accessories market, customers purchase the same or similar products for their devices over and over again.

11. To promote and protect the HP family of brands, numerous trademarks have been registered with the United States Patent and Trademark Office. Trademarks that cover the HP Products at issue in this lawsuit include, but are not limited to, HP® (U.S. Trademark Registration Nos. 1,840,215 and 4,272,548) (collectively referenced as the “HP Trademarks”).

12. HPDC has an exclusive license to use and enforce the HP Trademarks.

13. The registration for each of the HP Trademarks is valid, subsisting, and in full force and effect.

14. HP actively uses, advertises, and markets all of the HP Trademarks in commerce throughout the United States.

15. For decades, consumers have recognized the HP Trademarks as being associated with high-quality printing supplies and accessories. The HP Trademarks are widely recognized by the general consuming public of the United States, and HP is recognized as the source of products bearing the HP Trademarks.

16. Due to the superior quality and exclusive distribution of HP Products, and because HP is recognized as the source of high-quality products, the HP Trademarks have enormous value.

E-Commerce Websites and the Challenge They Present to HP Product Quality and Goodwill

17. E-commerce retail sales have exploded over the past decade. From 2009 through the second quarter of 2021, the percentage of total retail sales in the United States that were completed through e-commerce channels rose from 3.8% to 13.3%. *See* Federal Reserve Bank of St. Louis, *E-Commerce Retail Sales as a Percent of Total Sales* (February 19, 2021), <https://fred.stlouisfed.org/series/ECOMPCTSA>. In 2020, consumers spent \$861 billion on e-commerce sales, a 44% increase from 2019. *See* Fareeha Ali, *U.S. ecommerce grows 44% in 2020*, DIGITAL COMMERCE 360 (Jan. 29, 2021), <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>.

18. While e-commerce sales have provided brand owners with a great deal of opportunity, they also greatly challenge a brand owner's ability to control the quality and safety of its products.

19. Unlike when purchasing products at a brick-and-mortar store, consumers who purchase products through e-commerce websites cannot touch, inspect, or interact with products

before purchasing them. Instead, consumers must trust that the product they select over the Internet will be authentic and of the quality they expect and typically receive from the brand owner.

20. E-commerce websites have an exceedingly low barrier to entry and do not require sellers to disclose to consumers whether they are an authorized seller of products sold on the websites. As a result, any person who is able to obtain a brand owner's products through unauthorized diversion can sell the products on e-commerce websites while concealing that they are an unauthorized seller who is outside of, and does not abide by, the brand owner's quality controls.

21. E-commerce channels are overrun by unauthorized sellers—such as Ink Genie—who have no relationship with or obligations to brand owners who exercise quality controls over their products sold by authorized sellers. It is unfortunately common for unauthorized sellers to sell diverted products over the Internet that are of lesser quality than products sold through brand owners' authorized channels. See Scott Cohn, *Greed Report: Your quest for savings could land you in the "gray market,"* CNBC, Sept. 8, 2016, <https://www.cnbc.com/2016/09/08/greed-report-your-quest-for-savings-could-land-you-in-the-gray-market.html>; Alexandra Berzon et al., *Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products,* THE WALL STREET JOURNAL, Aug. 23, 2019, <https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990>. It is also common for unauthorized sellers to sell products that are previously used—including products retrieved from dumpsters—as “new” on e-commerce websites. See Khadeeja Safdar et al., *You Might Be Buying Trash on Amazon—Literally,* THE WALL STREET JOURNAL, Dec. 18, 2019, <https://www.wsj.com/articles/you-might-be-buying-trash-on-amazonliterally-11576599910>.

22. The problem of sales of poor-quality, and often counterfeit, products on e-commerce websites has become so serious that, in November 2019, the United States Senate Finance Committee issued a bipartisan report on the issue. The Committee found that the rise of e-commerce has fundamentally changed how consumers shop for products and that, as e-commerce has grown, counterfeit goods and products that “violate a right holder’s trademark or copyright” are being sold at an accelerating rate on e-commerce platforms. The Committee concluded that these sales are a “significant threat” to rights holders’ brands and to consumers, and that under current law it is up to rights holders to protect their intellectual property rights online. See Senate Finance Committee, *The Fight Against Fakes: How Statutory and Regulatory Barriers Prevent the Sharing of Information on Counterfeits*, Nov. 7, 2019, <https://www.finance.senate.gov/download/the-fight-against-fakes>.

23. Because brand owners have no relationship with or control over unauthorized sellers, brand owners have no ability to exercise their quality controls over products sold by unauthorized sellers or to ensure the products are safe and authentic. A brand owner’s inability to exercise control over the quality of its products presents serious risks to the satisfaction and safety of consumers.

24. Despite this unfortunate reality, most e-commerce websites do not inform customers whether a seller of a product is authorized by the brand owner. Instead, the structure, construction, and user interface of many e-commerce websites cause consumers to falsely believe they are always purchasing from the manufacturer or, at minimum, from an authorized seller that is selling under the manufacturer’s oversight and with the manufacturer’s approval. Even when e-commerce websites include partial disclaimers that note a seller’s lack of affiliation with a manufacturer, these disclaimers are often non-conspicuous and woefully incomplete. Such

disclaimers are also often contradicted by other statements made on the e-commerce website or in external media that advertise the website, such as statements that all products sold on the website are “100% genuine” and have “quality guaranteed!”

25. For all of these reasons, a vast number of consumers purchase products on e-commerce websites without recognizing that they purchased from an unauthorized seller that does not (and cannot) follow the brand owner’s quality controls.

26. When a consumer purchases a product on an e-commerce website and receives a product that does not meet the consumer’s expectations, the consumer is much more likely to associate the problem product with the brand/manufacturer rather than the product seller.

27. E-commerce websites also frequently give disgruntled consumers a powerful and convenient forum to air their grievances about disappointing products: online product reviews. Through this mechanism, any consumer who is dissatisfied with a product received can post a review on the Internet for all other consumers to see. These reviews, which are often permanently fixed, will often criticize the brand rather than the seller who sold the product.

28. Online product reviews significantly impact a brand’s reputation. Survey results have shown that 82% of United States adults “sometimes” consult online reviews for information when they consider buying a new product online, and 40% “always” or “almost always” consult such reviews. Aaron Smith & Monica Anderson, *Online reviews*, PEW RESEARCH CENTER, Dec. 19, 2016, <http://www.pewinternet.org/2016/12/19/online-reviews/>.

29. Consumers also place extraordinary trust in online reviews. Indeed, consumers are more than 10 times more likely to rely on consumer-generated product reviews than product descriptions written by manufacturers. *Moms Place Trust in Other Consumers*, EMARKETER, Feb. 10, 2010, <https://www.emarketer.com/Article/Moms-Place-Trust-Other-Consumers/1007509>.

30. Because consumers so heavily “rely on reviews when they’re shopping online,” the Federal Trade Commission has begun suing companies who post fake reviews of their products on e-commerce websites. Megan Henney, *FTC cracking down on fake Amazon reviews*, FOX BUSINESS, Feb. 28, 2019, <https://www.foxbusiness.com/technology/ftc-cracking-down-on-fake-amazon-reviews> (quoting a press release from the director of the FTC’s Bureau of Consumer Protection).

31. HP has historically been the subject of numerous online reviews from consumers who purchased HP Products from unauthorized sellers on the Internet that did not meet consumers’ expectations. In these reviews, consumers have complained of purchasing HP Products that were damaged, defective, previously used, or different from what consumers had ordered. These reviews have injured consumer perceptions of the HP® brand and HP’s reputation, causing HP to suffer damage to its goodwill and lost sales.

HP Has Implemented Quality Controls Throughout Its Authorized Channels of Distribution to Combat the Problems Presented By E-Commerce Websites, Protect the Value of the HP Trademarks, and Maximize the Likelihood That Customers Receive the Genuine, High-Quality Products They Expect From HP

32. To protect itself and consumers from the harms posed by unregulated sales of its products, including the negative reviews that have appeared on the Internet as a result of sales by unauthorized sellers, HP implemented a quality control program that applies to all of its Authorized Partners. The program applies to both Authorized Partners that exclusively sell HP Products in a brick-and-mortar retail setting and to Authorized Partners that sell online.

33. HP’s distribution controls are a quality control measure intended to minimize the risk and reputational damage caused by the illegal sale of poor-quality products bearing the HP Trademarks by unauthorized sellers, like Ink Genie, that do not abide by HP’s quality controls. The goal of HP’s quality control program is to ensure that consumers who buy HP Products, including

consumers who buy online, receive the high-quality products and services that they associate with the HP name. By minimizing the likelihood that consumers receive poor-quality products or otherwise have a poor shopping experience, the program both protects consumers from confusion and also protects the value and goodwill associated with the HP® brand.

34. HP abides by its quality control requirements and requires its Authorized Partners to abide by them as well.

35. HP's ability to exercise its quality controls is essential to the integrity and quality of HP Products, as well as the value of the HP Trademarks.

Authorized Partners May Sell HP Products Only Through Specific Channels and Must Adhere to HP's Quality Control and Customer Service Requirements

36. HP maintains strict quality controls over HP Products by allowing HP Products to be purchased by end-user consumers only from HP itself or from Authorized Partners.

37. The HP Rules limit from whom Authorized Partners may acquire, and to whom Authorized Partners may sell, HP Products. To ensure that Authorized Partners exclusively sell products that were subject to HP's quality controls and do not sell products that are diverted or potentially counterfeit, Authorized Partners must purchase the HP Products they resell exclusively from HP or other Authorized Partners. To prevent persons outside of HP's quality controls from acquiring and reselling HP Products, the HP Rules prohibit Authorized Partners from selling HP Products to any third party who is not an Authorized Partner and who intends to resell the products. Authorized Partners are permitted to sell HP Products only to end-user consumers or, in certain circumstances, to other Authorized Partners.

38. Given the many perils of unauthorized online sales as described above, the HP Rules also permit Authorized Partners to sell HP Products on the Internet only if they sell through websites that they own and operate, that have a URL that matches their legal or d/b/a name, and that they

disclose to HP. Authorized Partners cannot sell HP Products through any other website, including through other private websites and third-party storefronts on any online marketplace, unless they first apply for and receive written approval from HP.

39. These channel control restrictions are essential to HP's ability to exercise its quality controls over HP Products because they: (1) prevent unauthorized sellers from obtaining and reselling HP Products; and (2) allow HP to know all the websites where HP Products are being sold online by Authorized Partners. If a quality issue arises through an online sale, HP can identify the Authorized Partner that made the sale, contact the Authorized Partner, and address the issue immediately. HP is unable to take such action with respect to unauthorized sellers because it does not know who those sellers are and cannot obtain their cooperation in addressing any product quality or customer service issues that may arise.

40. In addition to restricting where and how Authorized Partners can acquire and sell HP Products, the HP Rules also require Authorized Partners to follow numerous quality control requirements related to the presentation, advertisement, handling, and fulfillment of HP Products.

41. To ensure that customers receive the genuine and high-quality products they expect from HP, the HP Rules require Authorized Partners to ship the exact HP Product(s) ordered by customers in new, unused, original packaging. Authorized Partners are prohibited from selling products that are open, damaged or defective.

42. To avoid consumer confusion and ensure that customers receive genuine HP Products, Authorized Partners are prohibited from modifying, relabeling, repackaging, or otherwise altering HP Products or any accompanying label or literature, unless instructed to do so by HP. Authorized Partners are also prohibited from tampering with, defacing, or otherwise altering any identifying information on HP Products, including any serial number, UPC code, or

other identifying information. In addition, Authorized Partners are prohibited from reselling any HP Products as “new” that have been returned, opened, or repackaged.

43. The HP Rules also require that Authorized Partners use a sufficient level of protection when transporting HP Products to ensure that consumers always receive products that are intact and in pristine condition.

44. The HP Rules give HP the right to monitor and audit Authorized Partners by inspecting their facilities, physical inventories, and records relating to HP Products to ensure their compliance with HP’s quality controls. During any investigation, Authorized Partners must disclose substantial information including information regarding their handling procedures, the identities of all their sources of HP Products, and information that shows the identities of customers who purchased HP Products.

45. Authorized Partners are also required to assist with any product recall or other consumer safety information dissemination effort conducted by HP regarding HP Products, including by sending notifications to all of Authorized Partners’ affected customers within 5 days of receiving notifications from HP unless otherwise permitted.

46. The HP Rules also impose numerous requirements on websites through which Authorized Partners sell HP Products—including websites that Authorized Partners own and operate and other websites that HP approves in writing (collectively referenced as “Authorized Websites”)—to optimize consumers’ purchase experience, control how HP Products are presented to consumers, and eliminate consumer confusion.

47. For example, Authorized Partners that sell HP Products through Authorized Websites (“Authorized Online Sellers”) must have a real physical address (not a P.O. box) where they conduct

their primary business operations, and that address and their phone number must be listed on their Authorized Website in an “About Us” section.

48. Authorized Online Sellers must also include detailed descriptions of HP Products on Authorized Websites and high quality, front-facing images of HP Products that are either supplied or approved by HP. Authorized Online Sellers are prohibited from advertising any HP Product they do not carry in their inventory, and every HP Product that is advertised on an Authorized Website must include the product’s model name or name series, its functionality, and compatibility and interoperability information.

49. To avoid consumer confusion regarding affiliation of products, the HP Rules require Authorized Websites to be structured so that, when consumers place a search for an HP Product by product name or part or model number, an HP Product always appears at the top of organic search results. Authorized Websites are also prohibited from displaying any non-HP Product in the midst of product detail information for an HP Product on any product detail page. Further, non-HP Products offered for sale on an Authorized Website cannot include any of the HP Trademarks or HP part numbers in their product names, to ensure that customers do not erroneously believe that a non-HP Product was manufactured by or is otherwise associated with HP.

50. HP’s quality control requirements and the additional requirements it imposes on Authorized Online Sellers are legitimate and substantial. HP implemented its quality controls so that it can control the quality of goods manufactured and sold under the HP Trademarks, to protect consumers as well as the value and goodwill associated with the HP Trademarks.

51. HP’s quality controls are also material, as they are designed to protect consumers and prevent them from receiving products that are of poor quality, counterfeit, very old and dried out, or otherwise different from what they expected. Consumers would find it material and relevant to their

purchasing decision to know whether an HP Product they were considering buying was being sold by an Authorized Partner who is subject to HP's quality control requirements or whether the product is being sold by an unauthorized seller who is not subject to HP's quality controls and over whom HP is unable to exercise its quality controls.

**HP Audits and Monitors Its Authorized Partners
To Ensure They Comply With Its Quality Control Requirements**

52. HP regularly audits its Authorized Partners to ensure they are following the HP Rules and adhering to HP's quality control requirements. HP conducts its auditing through both physical inspections of Authorized Partners' facilities and records, and also through remote monitoring and inspection of Authorized Websites.

53. The HP Rules give HP the right to conduct unannounced audits of Authorized Partners' facilities and records during normal business hours. During these physical inspections, HP has the ability to check both Authorized Partners' product inventories and records to confirm that Authorized Partners are abiding by HP's requirements regarding product sourcing, handling, fulfillment, and sales. If it is discovered that an Authorized Partner is failing to abide by HP's quality controls, for example by selling poor quality or counterfeit products to consumers or by selling HP Products to unauthorized resellers, HP has the right to suspend or terminate the Authorized Partner's status as an authorized seller of HP Products.

54. HP also regularly monitors Authorized Websites to ensure that they and the Authorized Online Sellers who use them continue to abide by the HP Rules and HP's quality controls. Through this monitoring, HP inspects every Authorized Website at least once per fiscal year to determine whether, among other things, Authorized Websites: (i) have an appropriate "About Us" section and clearly state the Authorized Online Seller's legal or d/b/a name, physical address, and phone number; (ii) exclusively contain images of HP Products and product descriptions that are

supplied or authorized by HP, contain all required content, and appropriately represent HP Products; (iii) allow for product searches and display HP Products at the top of organic search results when consumers search for an HP Product; (iv) do not use any of the HP Trademarks or HP part numbers within the names of non-HP Products, or otherwise lead consumers to believe that non-HP Products are manufactured by or otherwise associated with HP; and (v) contain any negative reviews or other feedback in which customers report they had a negative experience with an HP Product purchased from the Authorized Website.

55. If HP's monitoring reveals that an Authorized Website or Authorized Online Seller are not in compliance with HP's quality controls, for example because customer feedback states that an Authorized Online Seller sold poor quality HP Products or provided poor customer service, HP communicates with the responsible Authorized Online Seller to determine the cause of the problem and take any necessary corrective action. Through this process, HP has the right to visit the facilities of its Authorized Online Seller to confirm that all of HP's quality control requirements are being followed and that Authorized Online Sellers are not selling any counterfeit HP Products.

56. Based on what its investigation reveals, HP has the right to cease selling HP Products to an Authorized Online Seller and to suspend or terminate its status as an authorized seller of HP Products.

**Ink Genie is Not an Authorized Partner And Is
Illegally Selling Products Bearing the HP Trademarks**

57. In addition to monitoring its Authorized Online Sellers, HP also actively monitors online sales of HP Products by all sellers because of the risks to consumers and reputational concerns associated with the illegal sale of products bearing the HP Trademarks by unauthorized Internet sellers.

58. In the course of this monitoring, HP discovered that Ink Genie was unlawfully offering for sale a large volume of infringing products bearing the HP Trademarks through the Ink Genie Website.

59. Ink Genie is not an Authorized Partner and is not subject to, and does not comply with, the HP Rules or the quality controls that HP imposes on its Authorized Partners.

60. Ink Genie has not applied to be an Authorized Partner, and Ink Genie has not been approved by HP as an Authorized Partner or Authorized Online Seller of HP Products.

61. On May 10, 2021, counsel for HP wrote to Ink Genie's principals and explained that Ink Genie was infringing the HP Trademarks through its sales and also tortiously interfering with HP's contracts by purchasing products from Authorized Partners, who are prohibited from selling products to non-Authorized Partners who resell the products. The letter demanded that Ink Genie permanently cease selling products bearing the HP Trademarks and disclose every person and entity that provided Ink Genie with the products bearing the HP Trademarks it had listed for sale.

62. Ink Genie ignored and did not respond to the May 10, 2021 letter and continued its unlawful sales of products bearing the HP Trademarks.

63. On July 6, 2021, HP's counsel wrote again to Ink Genie's principals and reiterated its statements in the May 10 letter.

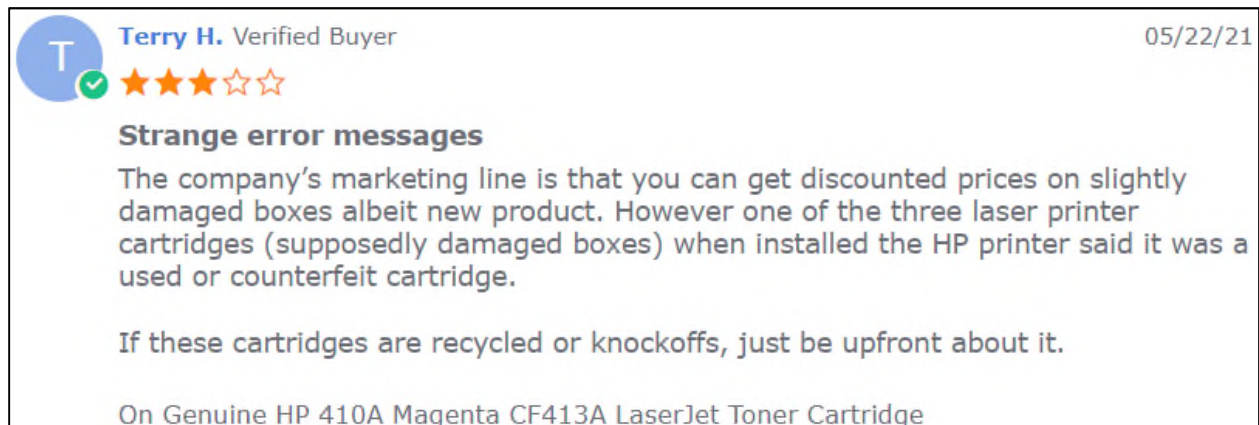
64. On July 27, 2021, without ever communicating with HP, Ink Genie filed the instant action. Since that time, Ink Genie has continued to advertise and sell infringing products bearing the HP Trademarks through the Ink Genie Website without any abatement. Ink Genie may also be selling infringing products through additional channels that HP has not yet discovered and cannot discover until it is able to take discovery.

65. Ink Genie’s disregard of HP’s written notifications and demands and its continued sale of non-genuine products despite being informed of its unlawful conduct demonstrates that Ink Genie is acting intentionally, willfully, and maliciously.

Ink Genie Has Sold Poor Quality HP Products

66. The Ink Genie Website contains a page, located at <https://inkgenie.com/pages/ink-genie-reviews> as of the time of filing, that purports to list customer reviews of the website as well as of products that were purchased from the Ink Genie Website. Although there are no “site” reviews as of the time of filing, there are reviews in which customers complain that Ink Genie sold poor quality products and provided poor customer service. Among other complaints, customers have complained that Ink Genie sold ink and toner products—including products bearing the HP Trademarks—that were damaged, previously used, very old, different from what has been advertised, and possibly counterfeit.

67. For example, on May 22, 2021, Ink Genie customer “Terry H.” reported that a product bearing the HP Trademarks he had purchased from the Ink Genie Website was identified by his “HP printer” as a “used or counterfeit cartridge.” He explained that the product had been advertised as coming in a “damaged” box, but he suspected it was actually “recycled” or a “knockoff.”



68. On May 23, 2021, Ink Genie customer “Roy G.” complained that an “ink cartridge” product bearing the HP Trademarks that he had purchased from the Ink Genie Website “doesn’t carry as much ink as you advertise.” He asserted: “that’s not treating the public fairly.”



Roy G. Verified Buyer 05/23/21

★★★★☆

The Ink Cartridge doesn't carry
The Ink Cartridge doesn't carry as much ink as you advertise; that's not treating the public fairly. RJG

On Genuine HP 65XL Black Ink Cartridge, High Yield (N9K04AN#140)

69. On March 12, 2021, Ink Genie customer “Rick L.” reported that a product bearing the HP Trademarks he had purchased from the Ink Genie Website had a “date [on] the box [that] is kind of old – 2016.”



Rick L. Verified Buyer 03/12/21

★★★★☆

Fast delivery - Good price
Date on box is kind of old - 2016

On Genuine HP 78A CE278A Black LaserJet Toner Cartridge


70. This review is particularly striking because Ink Genie represents on its Facebook page that it “only sell[s] ink cartridges that have at least 6 months left before expiring”:



71. Ink Genie also makes this representation on a “FAQS” page on the Ink Genie Website:

PRODUCT QUESTIONS	
Are these cartridges remanufactured?	+
What does it mean by Blemished Box and No Box? Are these cartridges new?	+
I submitted my email address. Where is the discount code?	+
What are the expiration dates on ink cartridges?	-
<p>We only sell ink cartridges that have at least 6 months left before expiring, but for the most part, our cartridges have over one year remaining on the expiration date. This is just the minimum that we would offer to an Ink Genie customer and this occurs very infrequently.</p>	

72. On February 17, 2021, Ink Genie customer “Martha B.” reported that, after she purchased a product that was advertised as coming in undamaged packaging, she received a product in damaged packaging.



Martha B. Verified Buyer

★★★★☆

02/17/21

Okay

I would purchase from ink genie again. The representative was nice and pleasant to deal with and helped me. There were 2 things that were not totally pleasing:
1) a discount is provided for damaged packaging. I was able to take advantage of this for one of my orders. What was baffling was both boxes were damaged and I wondered why I didn't receive the discount for the other product.
2) shipping was slower than I expected.
Other than that, experience was good. [Read Less](#)

On Genuine Epson 127 Color Combination Ink Cartridges, Extra High Yield, 3/Pack (T127520-S)

73. On December 17, 2020, Ink Genie customer “Ellen S.” reported that a printer ink product bearing the HP Trademarks that she had purchased from the Ink Genie Website “did not fit my HP [printer].” She explained that someone affiliated with Ink Genie “said he would check and email me,” but “[s]o far I have not heard back.”



74. These reviews are only a sample of the negative reviews customers have left of products they purchased from the Ink Genie Website.

75. Further, as discussed more below, the customer reviews that appear on the Ink Genie Website are presented in a highly misleading manner and appear to have been heavily filtered and edited. Upon information and belief, additional customers have left negative reviews of Ink Genie and products it has sold that do not appear on the Ink Genie Website because Ink Genie decided to remove them from public view.

76. The reviews detailed above are typical of the complaints made about the products sold and the customer service provided by unauthorized sellers on e-commerce websites. HP allows HP Products to be sold only by Authorized Partners, who are subject to and must follow the quality control and customer service requirements in the HP Rules, to prevent customers who purchase HP Products from suffering experiences like those described in the above complaints about Ink Genie and products it has sold.

77. In addition, HP’s own test buys from Ink Genie revealed that Ink Genie is likely sourcing some of its products from other unauthorized sellers listing products bearing the HP Trademarks on Amazon. One of the products that HP purchased had an Amazon Fulfillment Network Stock Keeping Unit (“FNSKU”) barcode sticker on its packaging, indicating that the product had been directly purchased from an Amazon seller or, at minimum, had previously been stored in an Amazon warehouse at some point.¹

78. HP’s test buys also revealed that Ink Genie is selling very old products. HP Products are stamped with an “end of warranty” date, which is typically 2 years after the product was manufactured. Two of the products that HP purchased from Ink Genie had end of warranty” dates in 2017 and 2018, indicating that the products are upwards of six years old.

Ink Genie Does Not Abide by HP’s Quality Control Requirements

79. Ink Genie does not abide by the quality control requirements that HP requires Authorized Partners to follow.

80. Ink Genie does not comply with HP’s quality control requirements because it has not provided HP with its business information nor given HP an opportunity to vet it to determine if Ink Genie meets HP’s criteria for what it requires of its Authorized Partners that obtain permission to sell HP Products. Instead, Ink Genie sells products online without HP’s authorization or oversight.

81. Ink Genie does not comply with HP’s quality control requirements because it sells on a private website that does not use approved descriptions or images of HP Products.

82. Ink Genie does not comply with HP’s quality control requirements—and interferes with HP’s quality controls—because it has not disclosed where it acquires products that bear the HP Trademarks and has not given HP the right to audit and inspect its facilities and records. As a result,

¹ The FNSKU is the unique identifier that must be placed on products sent to Amazon warehouses for storage and fulfillment.

HP cannot determine if any products Ink Genie is selling were obtained from sellers of grey market or counterfeit products, and it cannot determine if Ink Genie has any grey market or counterfeit products bearing the HP Trademarks in its inventory. HP also cannot determine if any products Ink Genie has sold are subject to a recall or product-safety information effort, and it cannot obtain Ink Genie's assistance with any recall or product-safety information efforts that may arise related to any products it is selling or has sold in the past.

83. Ink Genie also does not comply with HP's quality control requirements—and interferes with HP's quality controls—because it refuses to provide the identities of its customers who purchased HP Products. As a result, HP cannot determine whether Ink Genie has sold any products to unauthorized resellers and it cannot stop Ink Genie from further spreading products to unauthorized resellers that are outside of HP's quality controls.

84. Customer reviews of the Ink Genie Website show that Ink Genie has sold products—including products bearing the HP Trademarks—that were damaged, previously used, very old, different from what has been advertised, and possibly counterfeit. *See, e.g., supra* ¶¶ 67-75. Accordingly, upon information and belief, Ink Genie is failing to comply with HP's quality control requirements that require Authorized Partners to: (i) ship the exact HP Product(s) ordered by customers; (ii) not sell products that are damaged or of otherwise poor quality; and (iii) not sell HP Products as “new” that have been returned or have opened packaging. Ink Genie also sells products bearing the HP Trademarks that are in damaged packaging or in no packaging at all, violating HP's quality control requirement that Authorized Partners sell products only in new, unused, and original packaging and not modify or alter HP Products or any accompanying packaging or label.

85. Ink Genie's failure to comply with the HP Rules prevents HP from exercising control over the quality of products bearing the HP Trademarks that Ink Genie sells. HP cannot audit Ink Genie's facilities or records to ensure it is complying with HP's quality controls or close Ink Genie's account for failing to comply with HP's quality control requirements.

86. Ink Genie's failure to comply with the HP Rules also interferes with HP's quality controls because, unlike with its Authorized Partners and Authorized Online Sellers that HP audits through visits to facilities and remote monitoring of Authorized Websites, HP cannot take any action to correct Ink Genie's violations of its quality controls.

Ink Genie is Infringing the HP Trademarks by Selling Products Bearing the HP Trademarks That Are Not Subject To, Do Not Abide By, and Interfere with HP's Quality Control Requirements

87. For all of the reasons set forth above, the products bearing the HP Trademarks that Ink Genie sells fail to adhere to the extensive and legitimate quality controls that HP exercises over products bearing the HP Trademarks to protect consumers and its brand goodwill.

88. The products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements.

89. Because the products Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products Ink Genie sells are materially different from genuine HP Products.

90. Because the products Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products Ink Genie sells are not genuine HP Products.

91. Ink Genie's unauthorized sale of products bearing the HP Trademarks is likely to, and does, create customer confusion because customers who purchase products from Ink Genie believe they are purchasing genuine HP Products when, in fact, they are not.

92. Ink Genie’s unauthorized sale of products bearing the HP Trademarks infringes the HP Trademarks and diminishes their value.

93. Despite these facts, Ink Genie has sold, and continues to sell, products bearing the HP Trademarks through the Ink Genie Website without HP’s consent.

Ink Genie is Engaging in False Advertising By Misrepresenting Reviews of Its Products It Has Received From Customers

94. As noted above, the Ink Genie Website contains a page that purports to list customer reviews of products that customer purchased from the Ink Genie Website (the “Reviews Page”). As of the time of filing, the Reviews Page is located at <https://inkgenie.com/pages/ink-genie-reviews>.

95. Below a large image of five stars and a heading that says “WHAT PEOPLE ARE SAYING ABOUT INK GENIE®,” the Reviews Page states: “We are very proud of the service we provide our customers and always strive for perfection Our mission is to provide great Service, Satisfaction, and Savings. Don’t just take our word for it, see what our customers have to say about us...” The Reviews Page also displays a smaller image of 5 stars next to the words “886 reviews,” implying that the average “rating” that has been awarded across 886 reviews is 5 stars:



96. The Reviews Page purports to list both “Site Reviews” and “Product Reviews.” The Reviews Page in fact does not list any “Site Reviews,” but as of the time of filing it does list 886 “Product Reviews.” These reviews appear in groups of 10 per page, with a navigation menu at the bottom of each page that allows website visitors to view subsequent or previous pages of reviews:



97. As of the time of filing, there are 89 pages of product reviews. The review that appears at the top of the first page has a date of “10/07/21.” Each subsequent review over the following 82-and-a-half pages—equating to 825 product reviews—has a date that is earlier in time from the review that appears directly above it. Thus, the first 825 product reviews that appear on the Reviews Page are listed in reverse-chronological order (“the “Reverse-Chronological Reviews”). The first Reverse-Chronological Review was purportedly posted on October 7, 2021, and the last Reverse-Chronological Review—which appears on page 83—was purportedly posted on September 22, 2020.

98. Each product review on the Reviews Page includes a “star rating” of 1 to 5 stars. However, every single one of the Reverse-Chronological Reviews has a “rating” of 5 out of 5 stars. In other words, the first 825 product reviews that appear on the Reviews Page all award 5 out of 5 stars.

99. Page 83 of the product reviews on the Reviews Page contains the first product review that awards less than 5 stars. That review, which was purportedly written by “Charles H.,” awarded 4 out of 5 stars. However, the review by Charles H. was purportedly posted on October 7, 2021, whereas the review that appears immediately above—the final Reverse-Chronological Review—was posted on September 22, 2020:

Patti S. Verified Buyer 09/22/20
★★★★★
Great experience
My order came quickly and was exactly what I ordered. Will order again from Ink Genie!
On Genuine HP 61 Black/Tri-color Original Ink Cartridges, Multi-pack (2 cart per pack)
Share | Comments (1) Was This Review Helpful? 0 0

Ink Genie® 10/15/20
Thank you for your feedback, Patti! We are glad you had a great experience with Ink Genie and look forward to doing business with you again in the future!

Charles H. Verified Buyer 10/07/21
★★★★☆
Arrived in reasonable time rame.
Arrived in reasonable time rame.
On Genuine HP 950XL/951XL Twin Black and Cyan/Magenta/Yellow Ink Cartridges, High Yield, 5/Pack (F6V12FN#140)
Share | Was This Review Helpful? 0 0

100. Most of the reviews that appear after the “Charles H.” review, on pages 83-89 of the 89 pages of product reviews, award less than 5 stars. These reviews also generally appear in reverse-chronological order, but with all 4-star reviews appearing first before all 3-star reviews. In other

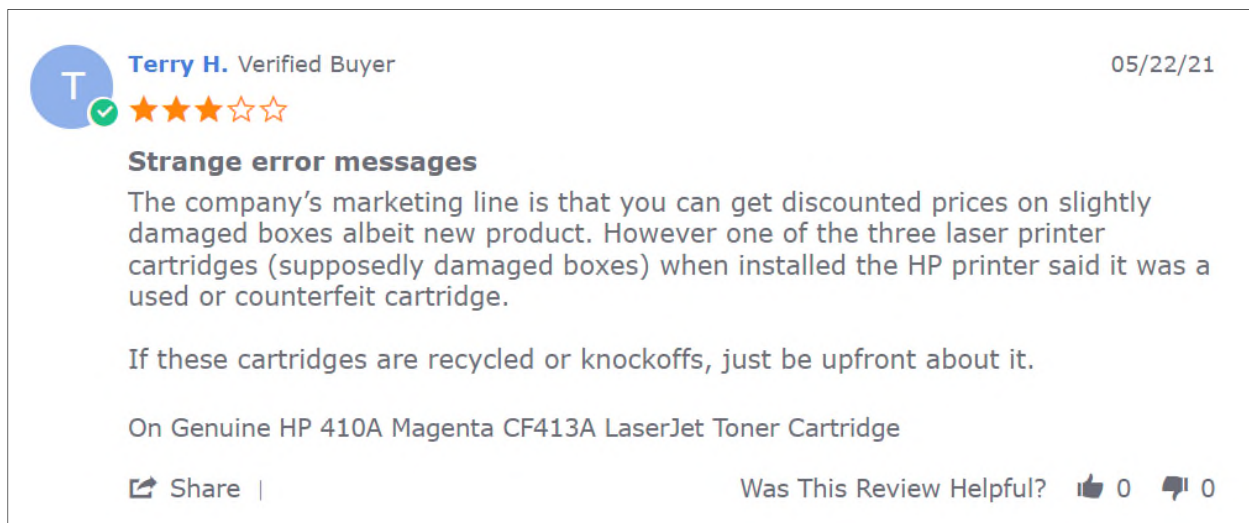
words, the ordering of the reviews shows that, rather than listing all reviews in reverse-chronological order without regard to the number of stars that were awarded in a product review, the Reviews Page instead lists virtually all 5 star product reviews that have ever been posted before subsequently listing all 4-star reviews and then all 3-star reviews.


101. Nothing on the Reviews Page explains or suggests that product reviews are organized in this way. Instead, the reverse-chronological ordering of the first 825 reviews on the Reviews Page leads consumers to believe that every product review that an Ink Genie customer has posted is listed on the Reviews Page in the order that it was posted, without regard for the numbers of stars that were awarded in the review.

102. The Reviews Page does not provide any means or mechanism for website visitors to change the order in which product reviews are shown. In addition, there is no way for website visitors to “skip” to the final pages of the 89 pages of product reviews. Instead, website visitors can “skip” only several pages of reviews at a time, meaning a visitor would have to click through more than 20 pages at minimum to reach the final pages that contain reviews awarding less than 5 stars. The obvious result of these design choices is that very few—if any—website visitors will click through dozens of pages of product reviews and discover that reviews awarding less than 5 stars are deceptively hidden at the final several pages of 89 pages of reviews.

103. Upon information and belief, Ink Genie intentionally sorts reviews so that 5-star reviews of its products appear first in its list of product reviews and reviews that award less than 5 stars do not appear until the very end of the list, where consumers would not expect to find them and would never look because doing so requires numerous clicks and reloading of different pages on the Reviews Page.

104. Through this tactic, Ink Genie is able to hide negative reviews of its products from public view. For example, in the review shown below, “Terry H.” reported that Ink Genie sold a product bearing the HP Trademarks that appeared to be recycled or a knockoff even though it was advertised as new. Yet even though this review was purportedly written less than five months ago, it did not appear until page **88** of the 89 pages in the Reviews Page and after hundreds of reviews that were more recently written.



 **Terry H.** Verified Buyer 05/22/21




★★★★★

Strange error messages

The company’s marketing line is that you can get discounted prices on slightly damaged boxes albeit new product. However one of the three laser printer cartridges (supposedly damaged boxes) when installed the HP printer said it was a used or counterfeit cartridge.

If these cartridges are recycled or knockoffs, just be upfront about it.

On Genuine HP 410A Magenta CF413A LaserJet Toner Cartridge

 Share | Was This Review Helpful?  0  0

105. Upon information and belief, Ink Genie also causes some reviews that its customers have written to not appear on the Reviews Page at all. As of the time of filing, there are 886 product reviews on the Reviews Page. Of these 886 reviews, 836 awarded 5 stars, 46 awarded 4 stars, and only 4 awarded 3 stars. **No reviews** awarded 2 stars or 1 star. It is implausible that customers have left 886 reviews on an e-commerce website and not a single review awarded less than 3 stars. Instead, upon information and belief, customers have written reviews that awarded 1 or 2 stars but Ink Genie, or someone at Ink Genie’s direction,² deleted or otherwise chose to not display those

² Per its website, Ink Genie utilizes the company “Yotpo” to collect reviews.

reviews because Ink Genie did not want potential customers to see negative reviews of the Ink Genie Website and the products Ink Genie sells.

106. For example, Ink Genie has received 17 reviews on www.google.com and 1 of those reviews awarded only one star. *See*

[https://www.google.com/maps/place/Ink+Genie/@40.6856926,-](https://www.google.com/maps/place/Ink+Genie/@40.6856926,-74.3448982,17z/data=!4m7!3m6!1s0x89c3b1f175887e07:0x554adaa0f61fccce!8m2!3d40.6856735!4d-74.3426773!9m1!1b1)

[74.3448982,17z/data=!4m7!3m6!1s0x89c3b1f175887e07:0x554adaa0f61fccce!8m2!3d40.68567](https://www.google.com/maps/place/Ink+Genie/@40.6856926,-74.3448982,17z/data=!4m7!3m6!1s0x89c3b1f175887e07:0x554adaa0f61fccce!8m2!3d40.6856735!4d-74.3426773!9m1!1b1)

[35!4d-74.3426773!9m1!1b1](https://www.google.com/maps/place/Ink+Genie/@40.6856926,-74.3448982,17z/data=!4m7!3m6!1s0x89c3b1f175887e07:0x554adaa0f61fccce!8m2!3d40.6856735!4d-74.3426773!9m1!1b1). Yet in the 886 reviews that appear on the Ink Genie website, not a single review awarded one star or even two stars.

107. Given that HP's own test buys revealed that Ink Genie is selling products that are upwards of six years old, it is implausible that Ink Genie has not received a single one star rating on its website.



108. Further, while the 3-star review from "Terry H." depicted above (*see supra* ¶ 104) appeared on the Reviews Page in the days leading up to the filing of these Counterclaims, it suddenly disappeared from the Reviews Page on or shortly before the day of filing of these Counterclaims.

109. These actions by Ink Genie are likely to deceive a substantial portion of Ink Genie's customers because Ink Genie presents its Reviews Page as displaying the full universe of reviews that were organically left by customers, without any reordering, screening, editing, deletion, or alteration of reviews by Ink Genie or any other party. Ink Genie represents this both on the Reviews Page itself, *see supra* ¶ 95, and at other places on the Ink Genie Website where it lauds the customer reviews it has received and encourages potential customers to read them. For example, on a section of the Ink Genie Website titled "Is Ink Genie Legit?", <https://inkgenie.com/pages/is-ink-genie-legit>, Ink Genie states: "I know you most likely just found Ink Genie while searching on the internet and have not heard much about us. Please don't just take our word about how good we are, read the

reviews below from our over 10,000 customers who are raving about our products, our pricing, and our customer service!”

I know you most likely just found Ink Genie while searching on the internet and have not heard much about us. Please don't just take our word about how good we are, read the reviews below from our over 10,000 customers who are raving about our products, our pricing, and our customer service!

Real Reviews From Real Customers ★★★★★ 886 Reviews < >
[See All Reviews](#)

<p>★★★★★ 10/04/21 excellent</p>  <p><i>great service, very quick delivery.</i> Jo R.</p> <p>Genuine HP 62 Black/62 Tri-Color Ink Cartridge (N9H64FN), Multi-</p>	<p>★★★★★ 10/03/21 great deal</p>  <p><i>happy with purchase</i> richard w.</p> <p>Genuine HP 78A CE278A Black LaserJet Toner Cartridge</p>
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110. Potential customers who browse the Reviews Page would not expect that, rather than listing all product reviews customers have written in reverse-chronological order without regard to the content of reviews, the Reviews Page instead entirely omits some negative reviews customers have written and hides other negative reviews at the very end of the Reviews Page where potential customers would never look.

111. Through these actions, Ink Genie willfully and knowingly misleads customers into believing that all reviews of its products have awarded 5 stars. This deception is material, because other customers’ experiences and opinions regarding products sold by Ink Genie are material to potential future customers’ decisions of whether to purchase products from Ink Genie. Thus, through its deception, Ink Genie causes customers who would not have purchased products to instead choose

to purchase from Ink Genie because they falsely believe that hundreds of past customers have exclusively left reviews that awarded Ink Genie with 5 stars.

112. HP is harmed by Ink Genie’s false advertising and misrepresentation of its product reviews because HP is harmed when Ink Genie sells products bearing the HP Trademarks to consumers. As detailed above, Ink Genie’s sales cause consumers to think less of the HP® brand because Ink Genie is not subject to HP’s quality controls, does not abide by HP’s quality controls, and has sold poor quality products bearing the HP Trademarks to consumers. This harm is magnified by Ink Genie’s false advertising and misrepresentation of its product reviews because those actions increase Ink Genie’s product sales.

Ink Genie is Engaging in False Advertising By Falsely Stating That The Products Bearing The HP Trademarks It Sells Are “Genuine”

113. Ink Genie is also engaging in false advertising by stating in numerous places on the Ink Genie Website that the products bearing the HP Trademarks that it sells are “genuine.” Below are examples of language that appears on the Ink Genie Website:



100% GENUINE
HP

Genuine HP Ink and Toner Cartridges

HP is arguably one of the most globally-renowned brands, and it's no mystery as to why. With quality as their top priority, they've created a line for any printing job you can imagine. From infrequent home use to large corporate printing needs, HP covers it all with ink and toner cartridges that deliver the utmost vibrant quality every time.

Every HP product that Ink Genie® offers is a genuine OEM product. We offer new, unopened boxes at the best everyday prices. We also offer even greater discounts for opened/slightly damaged packages. Though the package may not look perfect, we guarantee that the ink/toner is, in fact, perfect inside. We believe this is "[The Perfect Imperfection](#)" and hope you do too.

Genuine HP 952XL High Yield Black 952 Cyan Magenta Yellow Ink Cartridges

★★★★★ 13 Reviews







HP






114. Every single HP Product that is listed for sale on the Ink Genie Website also begins with the word “Genuine” in the product title. This can also be seen in the product names that appear next to customer reviews on the Ink Genie Website. *See supra ¶¶ 67-73.*

115. The phrase “genuine” is a legal term of art that is used in litigation involving the resale of trademarked products. Specifically, numerous cases have explained that resellers are protected from liability by the “first sale doctrine” if they are reselling trademarked products that are “genuine,” but the first sale doctrine does not apply if the products are not genuine. These cases

explain further that products are not “genuine,” among other reasons, if they are sold outside of the trademark holder’s legitimate, substantial, and non-pretextual quality controls.

116. For the reasons discussed above, the products bearing the HP Trademarks that Ink Genie sells are not “genuine” because they are outside of, do not abide by, and interfere with HP’s quality control requirements. Accordingly, by representing to consumers that the products bearing the HP Trademarks that they sell are “genuine,” Ink Genie is falsely advertising the products it is selling.

117. Consumers are more likely to purchase products that are advertised as “genuine,” particularly when those advertisements appear on little-known websites that list products of well-known brands for sale. Ink Genie is accordingly able to sell more products as a result of its false advertising of its products as “genuine,” and HP is harmed when Ink Genie sells products bearing the HP Trademarks to consumers for the reasons discussed above. *See supra* ¶ 112.

**Ink Genie Is Tortiously Interfering with HP’s Contracts and
Business Relationships with its Authorized Partners**

118. HP sells HP Products only to Authorized Partners and end-user consumers.

119. HP has not sold any HP Products to Ink Genie.

120. Ink Genie is not and has never been an Authorized Partner, but it has nonetheless sold a high volume of products bearing the HP Trademarks through the Ink Genie Website. As shown above, Ink Genie brags on the Ink Genie Website that it has “over 10,000 customers who are raving about our products.” *See supra* ¶ 109.

121. Although HP must take discovery in this action to learn how Ink Genie acquired the products bearing HP Trademarks that it has resold, based on these facts it is exceedingly likely that Ink Genie has obtained those products from one or more Authorized Partners.

122. Indeed, HP has made several purchases from the Ink Genie Website and one of the HP Products it purchased had a statement on its packaging that said “For authorized contract sales under agreed terms with HP; other sales are prohibited and may result in legal action.” This statement shows that the product was sold by HP to an Authorized Partner through a contract that required the product to be sold by the Authorized Partner to a specific customer, which would not have been Ink Genie.

123. Upon information and belief, Ink Genie has purchased products from HP’s Authorized Partners for the purpose of reselling the products on the Internet without HP’s approval, with full knowledge that such behavior would unlawfully infringe upon the HP Trademarks.

124. HP’s agreements with its Authorized Partners prohibit Authorized Partners from selling HP Products to third parties, like Ink Genie, who are not Authorized Partners and who resell the products.

125. Ink Genie was informed of this prohibition by at least May 10, 2021. On that day, Ink Genie’s principals received via email a cease-and-desist letter informing them that the contracts between HP and its Authorized Partners prohibit Authorized Partners from selling HP Products to any person or entity that, like Ink Genie, is not an Authorized Partner and resells the products. HP’s letter also informed Ink Genie that: (i) by purchasing HP Products from an Authorized Partner for the purpose of resale, they were causing a breach of the agreement between HP and its Authorized Partner and were interfering with HP’s agreements and business relationships; and (ii) if Ink Genie continued to acquire products from HP’s Authorized Partners for the purpose of reselling them, it would be liable for tortuously interfering with HP’s contracts and/or business relationships.

126. Despite having knowledge of HP's contracts with its Authorized Partners and their terms, upon information and belief, Ink Genie has continued to acquire products from one or more of HP's Authorized Partners for the purpose of reselling them.

127. Upon information and belief, Ink Genie willfully and knowingly induced, and is continuing to induce, unknown Authorized Partners to breach their agreements with HP so it can acquire products bearing the HP Trademarks and unlawfully infringe upon the HP Trademarks by reselling the products.

HP Has Suffered Significant Harm as a Result of Ink Genie's Conduct

128. The unauthorized sale of products bearing the HP Trademarks by unauthorized sellers such as Ink Genie causes significant harm to HP.

129. When a consumer receives a poor-quality, tampered-with, or defective product bearing the HP Trademarks from an unauthorized seller, such as Ink Genie, the consumer associates that negative experience with HP. Accordingly, Ink Genie's ongoing sale of non-genuine products bearing the HP Trademarks harms HP and the value of the HP Trademarks.

130. As a proximate result of Ink Genie's actions, HP has suffered and will continue to suffer irreparable harm and significant monetary harm, including but not limited to loss of sales, damage to its existing and potential business relations, and damage to the value of its intellectual property and the goodwill associated with the HP Trademarks.

131. HP is entitled to injunctive relief because Ink Genie will otherwise continue to unlawfully infringe the HP Trademarks, causing continued irreparable harm to HP's reputation, goodwill, intellectual property, and brand integrity.

132. Ink Genie's conduct was and is knowing, intentional, willful, malicious, wanton, and contrary to law.

133. Ink Genie's willful infringement of the HP Trademarks and continued pattern of misconduct demonstrate an intent to harm HP.

FIRST CAUSE OF ACTION
Trademark Infringement – 15 U.S.C. §§ 1114, 1125(a)(1)

134. HP hereby incorporates the allegations contained in the foregoing Paragraphs as if fully set forth herein.

135. The HP Trademarks have been registered with the United States Patent and Trademark Office.

136. The HP Trademarks are valid and subsisting trademarks in full force and effect.

137. HPDC has an exclusive license to use and enforce the HP Trademarks.

138. Ink Genie willfully and knowingly used, and continues to use, the HP Trademarks in commerce for the purpose of selling products bearing the HP Trademarks without HP's consent.

139. Ink Genie is not an Authorized Partner and does not have HP's authorization to sell HP Products.

140. HP has established and implemented legitimate, substantial, and non-pretextual quality control requirements with which genuine HP Products must comply.

141. HP abides by these quality controls procedures and requires all of its Authorized Partners to abide by these quality controls.

142. HP's quality controls are material, as they protect consumers and prevent them from receiving poor quality products or poor customer service. When a consumer considers whether to purchase a product bearing the HP Trademarks, whether the product is subject to and abides by HP's quality control requirements is relevant to the consumer's purchasing decision.

143. The products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements.

144. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are materially different from genuine HP Products sold by Authorized Partners.

145. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are not genuine HP Products.

146. Ink Genie's unauthorized sales of products bearing the HP Trademarks interfere with HP's quality controls and its ability to exercise quality control over products bearing the HP Trademarks.

147. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are subject to and abide by HP's quality controls when, in fact, they do not.

148. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are genuine HP Products when, in fact, they are not.

149. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are sponsored by, authorized by, or otherwise connected with HP when, in fact, they are not.

150. Ink Genie's unauthorized use of the HP Trademarks has infringed upon and materially damaged the value of the HP Trademarks and caused significant damage to HP's business relationships.

151. As a proximate result of Ink Genie's actions, HP has suffered, and continues to suffer, immediate and irreparable harm. HP has also suffered, and continues to suffer, damages including but not limited to loss of business, goodwill, reputation, and profits in an amount to be proven at trial.

152. HP is entitled to recover its damages caused by Ink Genie's infringement of the HP Trademarks and disgorge Ink Genie's profits from its willfully infringing sales and unjust enrichment.

153. HP is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Ink Genie's infringement and, unless Ink Genie is permanently enjoined, HP will suffer irreparable harm.

154. HP is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Ink Genie willfully, intentionally, maliciously, and in bad faith infringed the HP Trademarks.

SECOND CAUSE OF ACTION
Unfair Competition – 15 U.S.C. § 1125(a)(1)(A)

155. HP hereby incorporates the allegations contained in the foregoing Paragraphs as if fully set forth herein.

156. The HP Trademarks have been registered with the United States Patent and Trademark Office.

157. The HP Trademarks are valid and subsisting trademarks in full force and effect.

158. HPDC has an exclusive license to use and enforce the HP Trademarks.

159. Ink Genie has willfully and knowingly used, and continues to use, the HP Trademarks in interstate commerce for the purpose of selling products bearing the HP Trademarks without HP's consent.

160. Ink Genie is not an Authorized Partner and does not have HP's authorization to sell HP Products.

161. HP has established and implemented legitimate and substantial quality control requirements with which genuine HP Products must comply.

162. HP abides by these quality controls procedures and requires all of its Authorized Partners to abide by these quality controls.

163. HP's quality controls are material, as they protect consumers and prevent them from receiving poor quality products or poor customer service. When a consumer considers whether to purchase a product bearing the HP Trademarks, whether the product is subject to and abides by HP's quality control requirements is relevant to the consumer's purchasing decision.

164. The products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements.

165. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are materially different from genuine HP Products sold by Authorized Partners.

166. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are not genuine HP Products.

167. Ink Genie's unauthorized sales of products bearing the HP Trademarks interfere with HP's quality controls and its ability to exercise quality control over products bearing the HP Trademarks.

168. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are subject to and abide by HP's quality controls when, in fact, they do not.

169. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are genuine HP Products when, in fact, they are not.

170. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are sponsored by, authorized by, or otherwise connected with HP when, in fact, they are not.

171. Ink Genie's unauthorized use of the HP Trademarks has infringed upon and materially damaged the value of the HP Trademarks and caused significant damage to HP's business relationships.

172. As a proximate result of Ink Genie's actions, HP has suffered, and continues to suffer, immediate and irreparable harm. HP has also suffered, and continues to suffer, damages including but not limited to loss of business, goodwill, reputation, and profits in an amount to be proven at trial.

173. HP is entitled to recover its damages caused by Ink Genie's unfair competition and disgorge Ink Genie's profits from its willfully infringing sales and unjust enrichment.

174. HP is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Ink Genie's actions and, unless Ink Genie is permanently enjoined, HP will suffer irreparable harm.

175. HP is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Ink Genie willfully, intentionally, maliciously, and in bad faith engaged in unfair competition.

THIRD CAUSE OF ACTION
False Advertising – 15 U.S.C. § 1125(a)(1)(B)

176. HP hereby incorporates the allegations contained in the foregoing Paragraphs as if fully set forth herein.

177. The HP Trademarks have been registered with the United States Patent and Trademark Office.

178. The HP Trademarks are valid and subsisting trademarks in full force and effect.

179. Through the Ink Genie Website, Ink Genie has willfully and knowingly used, and continues to use, the HP Trademarks in interstate commerce for purposes of advertising, promoting, and selling HP products without HP's consent.

180. Through the Ink Genie Website, Ink Genie advertises ink and toner products to consumers throughout the United States.

181. Upon information and belief, through the Ink Genie Website, Ink Genie sells ink and toner products to consumers throughout the United States.

182. As discussed above, *see supra* ¶¶ 94-112, the Ink Genie Website contains a Reviews Page that purports to list reviews customers have left of products they purchased from the Ink Genie Website. The Reviews Page can be viewed by any visitor to the Ink Genie Website.

183. Below a large image of five stars and a heading that says “WHAT PEOPLE ARE SAYING ABOUT INK GENIE®,” the Reviews Page states: “We are very proud of the service we provide our customers and always strive for perfection Our mission is to provide great Service, Satisfaction, and Savings. Don’t just take our word for it, see what our customers have to say about us...” The Reviews Page also displays a smaller image of 5 stars next to the words “886 reviews,” implying that the average “rating” that has been awarded across 886 reviews is 5 stars.

184. These images and language, as well as other language that appears on the Ink Genie Website, are intended to lead consumers to believe that the customer reviews that appear on the Reviews Page are the full universe of reviews that have been organically left by customers and have not been reordered, screened, edited, deleted, or altered by Ink Genie or any other party.

185. In reality, the customer reviews that appear on the Reviews Page have been reordered, screened, edited, and altered in at least two different ways. First, the reviews have been reordered so that virtually all 5-star reviews that customers have written appear in reverse-chronological order before any reviews that awarded less than 5 stars. This reordering, along with design features on the Reviews Page that make it very time consuming for website visitors to view reviews that appear after the first several pages of reviews, have the effect of concealing all negative reviews from public view because very few—if any—website visitors will click through dozens of pages of product reviews and discover that reviews awarding less than 5 stars are deceptively hidden at the final several pages of 89 pages of reviews.

186. No language on the Reviews Page or Ink Genie Website suggests that product reviews have been reordered in this way. Further, the reverse-chronological ordering of the first 825 reviews on the Reviews Page leads consumers to believe that every product review that an Ink Genie customer has posted is listed on the Reviews Page in the order that it was posted, without regard for the numbers of stars that were awarded in the review.

187. Second, upon information and belief, Ink Genie also causes some reviews that its customers have written to not appear on the Reviews Page at all, either by deleting the reviews outright or otherwise not displaying them on the Reviews Page. Ink Genie has done this because it does not want potential customers to see negative reviews of the Ink Genie Website and the products Ink Genie sells.

188. These actions by Ink Genie are likely to deceive a substantial portion of Ink Genie's customers because Ink Genie presents its Reviews Page as displaying the full universe of reviews that were organically left by customers, without any reordering, screening, editing, deletion, or alteration of reviews by Ink Genie or any other party. Potential customers who browse the Reviews Page would not expect that, rather than listing all product reviews customers have written in reverse-chronological order without regard to the content of reviews, the Reviews Page instead entirely omits some negative reviews customers have written and hides other negative reviews at the very end of the Reviews Page where potential customers would never look.

189. Through these actions, Ink Genie willfully and knowingly misleads customers into believing that all reviews of its products have awarded 5 stars. This deception is material, because other customers' experiences and opinions regarding products sold by Ink Genie are material to potential future customers' decisions of whether to purchase products from Ink Genie. Thus, through its deception, Ink Genie causes customers who would not have purchased products to instead choose

to purchase from Ink Genie because they falsely believe that hundreds of past customers have exclusively left reviews that awarded Ink Genie with 5 stars.

190. HP is harmed by Ink Genie's false advertising and misrepresentation of its product reviews because HP is harmed when Ink Genie sells products bearing the HP Trademarks to consumers. As detailed above, Ink Genie's sales cause consumers to think less of the HP® brand because Ink Genie is not subject to HP's quality controls, does not abide by HP's quality controls, and has sold poor quality products bearing the HP Trademarks to consumers. This harm is magnified by Ink Genie's false advertising and misrepresentation of its product reviews because those actions increase Ink Genie's product sales.

191. Ink Genie is also engaging in false advertising by stating in numerous places on the Ink Genie Website that the products bearing the HP Trademarks that it sells are "genuine."

192. Ink Genie is well aware that "genuine" is a legal term of art that is used in cases involving the resale of trademarked products.

193. Specifically, numerous cases have explained that resellers are protected from liability by the "first sale doctrine" if they are reselling trademarked products that are "genuine," but the first sale doctrine does not apply if the products are not genuine. These cases explain further that products are not "genuine," among other reasons, if they are sold outside of the trademark holder's legitimate, substantial, and non-pretextual quality controls. Ink Genie learned of these cases on or around May 10, 2021, at the latest, when its principals received a cease-and-desist letter from HP that explained that "first sale doctrine" and the significance of the word "genuine" in the context of resold products.

194. Despite Ink Genie's awareness that "genuine" is a legal term of art, Ink Genie falsely advertises that the products it sells are "genuine."

195. Ink Genie's representation that the products it sells are "genuine" is false. Ink Genie's products are not genuine because they are outside of, do not abide by, and interfere with HP's quality control requirements.

196. Through the Ink Genie Website, Ink Genie has willfully and knowingly deceived consumers into believing that Ink Genie sells "genuine" Ink Genie products that are subject to and abide by HP's quality controls when, in fact, it does not.

197. Ink Genie's misrepresentation that the products it sells are "genuine" is material because whether a product is genuine is a material component of a purchaser's decision to buy a product.

198. Consumers are more likely to purchase products that are advertised as "genuine," particularly when those advertisements appear on little-known websites that list products of well-known brands for sale.

199. Ink Genie is accordingly able to sell more products as a result of its false advertising of its products as "genuine," and HP is harmed when Ink Genie sells products bearing the HP Trademarks to consumers.

200. Ink Genie is also engaging in false advertising by stating on the Ink Genie website and in advertisements on its Facebook page that it "only sell[s] ink cartridges that have at least 6 months left before expiring." Two ink cartridge products that HP purchased from Ink Genie in 2021 were stamped with "end of warranty dates" showing that the products' warranties expired in 2017 and 2018, and thus that the products were manufactured in 2015 and 2016. Accordingly, Ink Genie does sell expired ink cartridge products and its representation to the contrary is false.

201. Ink Genie's misrepresentation that it "only sell[s] ink cartridges that have at least 6 months left before expiring" is material because whether an ink cartridge product is expired or near

expiration at the time of purchase is a material component of a purchaser's decision to buy an ink cartridge product. Consumers are more likely to purchase ink cartridge products that are advertised as being at least 6 months from expiration.

202. Ink Genie is accordingly able to sell more products as a result of its false advertising that it "only sell[s] ink cartridges that have at least 6 months left before expiring." and HP is harmed when Ink Genie sells ink cartridge products bearing the HP Trademarks to consumers.

203. Ink Genie's advertisements and promotions of its products unlawfully using HP's Trademarks have been disseminated to the relevant purchasing public.

204. As a proximate result of Ink Genie's actions, HP has suffered, and will continue to suffer, damage to its business, goodwill, reputation, and profits in an amount to be proven at trial.

205. HP is entitled to recover its damages caused by Ink Genie's false advertising and disgorge Ink Genie's profits from its willfully infringing sales and unjust enrichment.

206. HP is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Ink Genie's actions and, unless Ink Genie is permanently enjoined, HP will suffer irreparable harm.

207. HP is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendants willfully, intentionally, maliciously, and in bad faith engaged in false advertising.

FOURTH CAUSE OF ACTION
Common Law Trademark Infringement and Unfair Competition

208. HP hereby incorporates the allegations contained in the foregoing Paragraphs as if fully set forth herein.

209. The HP Trademarks have been registered with the United States Patent and Trademark Office.

210. The HP Trademarks are valid and subsisting trademarks in full force and effect.

211. HPDC has an exclusive license to use and enforce the HP Trademarks.

212. The HP Trademarks are distinctive and widely recognized by the consuming public.

HP Products are sold and purchased through HP's network of Authorized Partners throughout the United States, including in New Jersey.

213. HP is widely recognized as the designated source of goods bearing the HP Trademarks.

214. Ink Genie has willfully and knowingly used, and continues to use, the HP Trademarks in interstate commerce for the purpose of selling products bearing the HP Trademarks without HP's consent.

215. Ink Genie is not an Authorized Partner and does not have HP's authorization to sell HP Products.

216. HP has established and implemented legitimate, substantial, and non-pretextual quality control requirements with which genuine HP Products must comply.

217. HP abides by these quality controls procedures and requires all of its Authorized Partners to abide by these quality controls.

218. HP's quality controls are material, as they protect consumers and prevent them from receiving poor quality products or poor customer service. When a consumer considers whether to purchase a product bearing the HP Trademarks, whether the product is subject to and abides by HP's quality control requirements is relevant to the consumer's purchasing decision.

219. The products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements.

220. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are materially different from genuine HP Products sold by Authorized Partners.

221. Because the products bearing the HP Trademarks that Ink Genie sells are not subject to, do not abide by, and interfere with HP's quality control requirements, the products that Ink Genie sells are not genuine HP Products.

222. Ink Genie's unauthorized sales of products bearing the HP Trademarks interfere with HP's quality controls and its ability to exercise quality control over products bearing the HP Trademarks.

223. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are subject to and abide by HP's quality controls when, in fact, they do not.

224. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are genuine HP Products when, in fact, they are not.

225. Ink Genie's unauthorized sales of products bearing the HP Trademarks are likely to cause confusion, cause mistake, or deceive consumers because Ink Genie's use of the HP Trademarks suggests that the products Ink Genie offers for sale are sponsored by, authorized by, or otherwise connected with HP when, in fact, they are not.

226. Ink Genie's unauthorized use of the HP Trademarks has infringed upon and materially damaged the value of the HP Trademarks and caused significant damage to HP's business relationships.

227. As a proximate result of Ink Genie's actions, HP has suffered, and continues to suffer, immediate and irreparable harm. HP has also suffered, and continues to suffer, damages including but not limited to loss of business, goodwill, reputation, and profits in an amount to be proven at trial.

228. HP is entitled to recover its damages caused by Ink Genie's trademark infringement and unfair competition and disgorge Ink Genie's profits from its willfully infringing sales and unjust enrichment.

229. HP is also entitled to recover punitive damages because Ink Genie has acted with fraud, malice, and willful and wanton conduct.

FIFTH CAUSE OF ACTION
Tortious Interference with Contract

230. HP hereby incorporates the allegations contained in the foregoing Paragraphs as if fully set forth herein.

231. HP sells HP Products only to Authorized Partners and to end-user consumers.

232. HP has entered into contracts with its Authorized Partners. These contracts prohibit Authorized Partners from selling HP Products to third parties, such as Ink Genie, who are not Authorized Partners and who resell the products.

233. Ink Genie has sold a high volume of HP Products through the Ink Genie Website.

234. HP has not itself sold any HP Products to Ink Genie.

235. Based on these facts, it is plausible and a reasonable inference that Ink Genie has purchased the HP Products it is reselling, and has resold, from one or more of HP's Authorized

Partners.

236. By purchasing products from Authorized Partners and then reselling them on the Internet, Ink Genie caused and induced Authorized Partners to breach their contracts with HP.

237. Ink Genie has known that HP's contracts with its Authorized Partners prohibit Authorized Partners from selling HP Products to any seller who, such as Ink Genie, is not an Authorized Partner and resells the products.

238. Ink Genie has known of this prohibition since May 10, 2021 at the latest, through a cease-and-desist letter its principals received from HP that informed Ink Genie of this prohibition.

239. Despite having knowledge of this prohibition, Ink Genie intentionally, knowingly, and willfully interfered with HP's contracts with its Authorized Partners by inducing Authorized Partners to breach their contracts and sell products to Ink Genie that Ink Genie resold on the Internet.

240. In interfering with HP's contracts, Ink Genie acted with a wrongful purpose, employed wrongful means, and engaged in an independently wrongful act. Ink Genie purchased products from Authorized Partners—and in so doing, instigated a breach of Authorized Partners' contracts with HP—so that Ink Genie could unlawfully infringe upon and materially damage the value of the HP Trademarks by reselling the products on the Internet, thereby committing an independent tort.

241. Because Ink Genie has refused to disclose how it obtained the HP Products it has resold, HP must take discovery in this action to learn the specific identities of the Authorized Partners that have sold HP Products to Ink Genie. Ink Genie, however, knows the sources of the HP Products it has obtained and is on notice of the basis for HP's claim of tortious interference. HP's contracts with its Authorized Partners are a specific class of contract that Ink Genie caused Authorized Partners to breach when it purchased HP Products from Authorized Partners for the purpose of resale.

242. Ink Genie is not a party to the contracts Ink Genie caused Authorized Partners to breach.

243. Ink Genie's actions have caused injury to HP for which HP is entitled to compensatory damages in an amount to be proven at trial.

244. HP is also entitled to recover punitive damages because Ink Genie has acted with fraud, malice, and willful and wanton conduct.

PRAYER FOR RELIEF

WHEREFORE, HP prays for relief and judgment as follows:

A. Judgment in favor of HP and against Ink Genie in an amount to be determined at trial including, but not limited to, compensatory damages, statutory damages, treble damages, restitution, disgorgement of profits, punitive damages, and pre-judgment and post-judgment interest, as permitted by law;

B. Preliminary and permanent injunctions enjoining Ink Genie and any of Ink Genie's employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, as well any and all other entities owned or controlled by Ink Genie, and all of those in active concert and participation with Ink Genie (collectively, the "Enjoined Parties"), as follows:

- i) Prohibiting the Enjoined Parties from advertising or selling, via the Internet or otherwise, all HP Products;
- ii) Prohibiting the Enjoined Parties from using any of the HP Trademarks in any manner, including advertising on the Internet;
- iii) Prohibiting the Enjoined Parties from importing, exporting, manufacturing, producing, distributing, circulating, selling, offering to sell, advertising, promoting, or displaying any and all HP Products as well as any products bearing any of the HP Trademarks;

- iv) Prohibiting the Enjoined Parties from disposing of, destroying, altering, moving, removing, concealing, or tampering with any records related to any products sold by them which contain the HP Trademarks, including: invoices, correspondence with vendors and distributors, bank records, account books, financial statements, purchase contracts, sales receipts, and any other records that would reflect the source of the products that Ink Genie has sold bearing these trademarks;
 - v) Requiring the Enjoined Parties to take all action to remove from Ink Genie's websites or storefronts any reference to any of HP's products or any of the HP Trademarks;
 - vi) Requiring the Enjoined Parties to take all action, including, but not limited to, requesting removal from Internet search engines (such as Google, Yahoo!, and Bing), to remove from the Internet any of the HP Trademarks which associate HP's products, or the HP Trademarks, with Ink Genie or its websites or storefronts;
 - vii) Requiring the Enjoined Parties to take all action to remove unauthorized HP Trademarks from the Internet, including from the www.inkgenie.com website and the <https://www.facebook.com/InkGenie/> webpage; and
 - viii) Requiring Ink Genie to destroy or return to HP all products bearing the HP Trademarks in its possession, custody, or control.
- C. An award of attorneys' fees, costs, and expenses; and
 - D. Such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, HP demands a trial by jury on all issues so triable.

Date: October 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the Court using CM/ECF, which will send notification of such filing to all counsel of record.

Date: October 8, 2021

/s/ Kristofer T. Henning

Kristofer T. Henning