

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

LEXMARK INTERNATIONAL, INC.

v.

STATIC CONTROL COMPONENTS, INC.

**BRIEF AMICUS CURIAE OF
GRASSROOTS RECYCLING NETWORK
IN SUPPORT OF STATIC CONTROL COMPONENTS, INC.**

Bill Sheehan, President
Grass Roots Recycling
Network

(put address here)

Dated: January 29, 2003

The Grass Roots Recycling Network (GRRN) is an environmental organization dedicated to the goal of achieving zero waste. Our member organizations include a variety of national, regional and state environmental groups as well as individuals. Additional information concerning the nature of our membership may be found at www.grrn.org. GRRN has no direct financial interest in the outcome of this litigation. However, an improper interpretation of the DMCA's reverse engineering exception could have serious environmental consequences that impact the areas that we are concerned with. Our organization was founded in 1995 and was launched by leaders from the Sierra Club's solid waste committee, the California Resource Recovery Association and the Washington D.C. based institute for local self reliance.

This brief is intended to address the environmental consequences of Lexmark's marketing strategy.

It is apparent from the complaint that Lexmark is attempting to use the Digital Millennium Copyright Act to restrict remanufacturing of their cartridges. According to the complaint, a cartridge placed in a Lexmark printer must undergo "a secret handshake" before the printer will recognize the cartridge as an "authorized Lexmark cartridge." If this secret handshake is not completed, then the cartridge will not be allowed to print. Static Control, according to Lexmark, has developed a chip which engages in this secret handshake. Static Control does so in order that used Lexmark cartridges may be remanufactured and reused in a Lexmark printer. Lexmark seeks to prohibit unauthorized remanufacturing.

In the event Lexmark is successful in applying the Digital Millennium Copyright Act to prohibit the sale of chips which allow remanufacturing of their cartridges, then more Lexmark cartridges will inevitably end up in municipal landfills across this country. Even the most

modern landfills merely delay rather than eliminate the transfer of pollutants to ground water. Discarded personal computers and consumer electronics – so called e-waste – compose one of the fastest growing and most highly toxic waste streams in the industrialized world. Over two hundred million toner cartridges are used in the United States every year. When companies such as Lexmark encourage the one way disposition of these cartridges, these materials are dumped in landfills. Tax payers and local governments bear the cost and burden of managing these wastes. Remanufacturers, who take some of these toner cartridges and reuse them, keep waste toner cartridges from ending up in the landfills and in the waste streams.

Remanufacturing is in the public interest. Remanufacturers take used toner cartridges, replace worn out components, adding new toner allowing the cartridge to be reused. Remanufacturing helps contribute toward a goal of having zero waste. Through remanufacturing, a cartridge can be used time and again in its original form. Remanufacturing is more environmentally friendly than recycling. A remanufacturer takes the cartridge in its existing form, and reuses most of the components as they were originally constructed. Relatively little additional energy is needed to prepare a cartridge for additional use. Recycling, by contrast often results in the components of a cartridge being melted down into its constituent plastics and metals and then reused. Far more energy and resources are used in recycling a toner cartridge than in remanufacturing it. The EPA has recognized this distinction, and the superiority of remanufacturing in its publication *Stop Waste Now*.

The GRRN promotes maximizing recycling, minimizing waste and reducing consumption. Remanufacturing is an important part of achieving the goal of zero waste. The GRRN endorses the goals set forth in the recent WEEE directive from the European Union. The European Union requires producers to take responsibility for their own waste and ensure that the

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waste is properly recycled or remanufactured. We support such initiatives. Lexmark's prebate and killer chip program does not constitute taking responsibility for their waste. While we applaud Lexmark's attempts to recycle the cartridges returned to them, we are appalled by their actively discouraging remanufacturing of the cartridges that are otherwise destined for the landfills. The WEEE directive also provides in pertinent part that strategies such as that used by Lexmark are outlawed. (See Article 4). GRRN thinks it is appropriate for the court to consider public interest in evaluating whether Lexmark's novel use of the Digital Millennium Copyright Act to prevent remanufacturing is an intended use by congress.

Respectfully submitted,

Bill Sheehan, President
Grass Roots Recycling
Network

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