

SUBPOENA IN A CIVIL CASE
Issued by the
United States District Court
WESTERN DISTRICT OF PENNSYLVANIA

MC 06-21-E

Static Control Components, Inc.
Plaintiff/Counterclaim Defendant

Civil Action No. 04-CV-84-KSF
Pending in the United States District Court,
Eastern District of Kentucky
Honorable Karl S. Forester

v.

Lexmark International, Inc.
Defendant/Counterclaim Plaintiff

v.

Wazana Brothers International, Inc.
d/b/a Micro Solutions Enterprises
Counterclaim Defendant

v.

Pendl Companies, Inc.
Counterclaim Defendant

v.

NER Data Products, Inc.
Counterclaim Defendant

To: ERS Imaging Supplies, Inc. d/b/a
Environmental Reclamation Services
380 East Bayfront Parkway
Erie, Pennsylvania 16507

FED. R. CIV. P. 45 SUBPOENA:
SECOND SUPPLEMENTAL RESPONSES OF ERS IMAGING SUPPLIES, INC.
d/b/a ENVIRONMENTAL RECLAMATION SERVICES
TO REQUESTS FOR PRODUCTION OF DOCUMENTS

ERS Imaging Supplies, Inc. d/b/a Environmental Reclamation Services, by its attorneys, MacDonald, Illig, Jones & Britton LLP, serves the following Second Supplemental Responses to the Requests for Production of Documents set forth in the Fed. R. Civ. P. 45 Subpoena served upon it by Lexmark International, Inc.:

Request No. 1: Please produce all documents and things referring or relating to the purchase or other acquisition of used Lexmark Cartridges, including, but not limited to:

a. Documents and things sufficient to identify the entities (including names, addresses, phone numbers, and/or email addresses) that Environmental Reclamation Services purchased or acquired used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges from;

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

In further response, Lexmark Cartridges are not separated or identified by or for Environmental Reclamation Services as "Prebate" or "non-Prebate," with the exception of the Lexmark Optra S and the Lexmark Optra T. With regard to the Lexmark Optra S: Part No.s 1382920, 1382925 and 1382929 are Prebate Cartridges; Part No.s 1382620 and 1382625 are non-Prebate Cartridges. With regard to the Lexmark Optra T: Part No.s 12A5840 and 12A5845 are Prebate Cartridges; Part No.s 12A5740 and 12A5745 are non-Prebate Cartridges.

b. Documents and things sufficient to identify the entities that Environmental Reclamation Services plans to purchase or acquire used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges from in the future;

RESPONSE: See Response to Request No. 1(a).

c. Documents and things containing Environmental Reclamation Services' communications with any entities identified in response to Request No. 1(a) and 1(b) including, but not limited to, advertising materials, marketing materials, call records, and/or electronic mail;

RESPONSE: See Response to Request No. 1(a).

In further response, a CD containing true and accurate copies of customer Purchase Orders received by Environmental Reclamation Services during 2005 was forwarded to Lexmark International, Inc. by overnight mail on January 23, 2006.

d. Documents and things sufficient to identify the number of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 1(a);

RESPONSE: See Response to Request No. 1(a).

e. Documents and things sufficient to identify the estimated number of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services plans to purchase or acquire in the future from any entities identified in response to Request No. 1(b);

RESPONSE: See Response to Request No. 1(a).

f. Documents and things sufficient to identify the types or model numbers of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 1(a);

RESPONSE: See Response to Request No. 1(a).

g. Documents and things sufficient to identify the prices paid by Environmental Reclamation Services for each of the types or model numbers of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 1(a); and

RESPONSE: See Response to Request No. 1(a).

h. Documents and things describing Environmental Reclamation Services' strategy for purchasing or acquiring used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges.

RESPONSE: None.

Request No. 2: Please produce all documents and things referring or relating to the sale or other distribution of used Lexmark Cartridges, including, but not limited to:

a. Documents and things sufficient to identify the entities (including names, addresses, phone numbers, and/or email addresses) that Environmental Reclamation Services sold or distributed used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges to;

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

In further response, Lexmark Cartridges are not separated or identified by or for Environmental Reclamation Services as "Prebate" or "non-Prebate," with the exception of the Lexmark Optra S and the Lexmark Optra T. With regard to the Lexmark Optra S: Part No.s 1382920, 1382925 and 1382929 are Prebate Cartridges; Part No.s 1382620 and 1382625 are non-Prebate Cartridges. With regard to the Lexmark Optra T: Part No.s 12A5840 and 12A5845 are Prebate Cartridges; Part No.s 12A5740 and 12A5745 are non-Prebate Cartridges.

b. Documents and things sufficient to identify the entities that Environmental Reclamation Services plans to sell or distribute used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges to in the future;

RESPONSE: See Response to Request No. 2(a).

c. Documents and things containing Environmental Reclamation Services' communications with any entities identified in response to Request No. 2(a) and 2(b) including, but not limited to, advertising materials, marketing materials, call records, and/or electronic mail;

RESPONSE: See Response to Request No. 2(a).

In further response, a CD containing true and accurate copies of customer Purchase Orders received by Environmental Reclamation Services during 2005 was

forwarded to Lexmark International, Inc. by overnight mail on January 23, 2006.

d. Documents and things sufficient to identify the number of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 2(a);

RESPONSE: See Response to Request No. 2(a).

e. Documents and things sufficient to identify the estimated number of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services plans to sell or distribute in the future to any entities identified in response to Request No. 2(b);

RESPONSE: See Response to Request No. 2(a).

f. Documents and things sufficient to identify the types or model numbers of used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 2(a);

RESPONSE: See Response to Request No. 2(a).

g. Documents and things sufficient to identify the prices charged upon resale by Environmental Reclamation Services for each of the types or model numbers of used Prebate

Lexmark Cartridges and used non-Prebate Lexmark Cartridges that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 2(a); and

RESPONSE: See Response to Request No. 2(a).

h. Documents and things describing Environmental Reclamation Services' strategy for selling and distributing used Prebate Lexmark Cartridges and used non-Prebate Lexmark Cartridges.

RESPONSE: None.

Request No. 3: Please produce all documents and things referring or relating to the purchase or other acquisition of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox, including, but not limited to:

a. Documents and things sufficient to identify the entities (including names, addresses, phone numbers, and/or email addresses) that Environmental Reclamation Services purchased or acquired used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox from;

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

b. Documents and things sufficient to identify the number of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 3(a);

RESPONSE: See Response to Request No. 3(a).

c. Documents and things sufficient to identify the types or model numbers of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 3(a); and

RESPONSE: See Response to Request No. 3(a).

d. Documents and things sufficient to identify the prices paid by Environmental Reclamation Services for each of the types or model numbers of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services purchased or acquired from any entities identified in response to Request No. 3(a).

RESPONSE: See Response to Request No. 3(a).

Request No. 4: Please produce all documents and things referring or relating to the sale or other distribution of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox, including, but not limited to:

a. Documents and things sufficient to identify the entities (including names, addresses, phone numbers, and/or email addresses) that Environmental Reclamation Services sold or distributed used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox to;

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

b. Documents and things sufficient to identify the number of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 4(a);

RESPONSE: See Response to Request No. 4(a).

c. Documents and things sufficient to identify the types or model numbers of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 4(a); and

RESPONSE: See Response to Request No. 4(a).

d. Documents and things sufficient to identify the prices paid by Environmental Reclamation Services for each of the types or model numbers of used toner cartridges compatible with laser printers made, sold, or branded by any of Canon, Epson, Hewlett-Packard, and Xerox that Environmental Reclamation Services sold or distributed to any entities identified in response to Request No. 4(a).

RESPONSE: See Response to Request No. 4(a).

Request No. 5: Please produce all documents and things referring or relating to Lexmark; Lexmark's Printers, Lexmark Cartridges; Lexmark's Prebate Program; and/or Lexmark Patents.

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

Response No. 6: Please produce all documents and things constituting or referring to communications to or from Environmental Reclamation Services referring to Lexmark; Lexmark's Printers; Lexmark Cartridges; Lexmark's Prebate program; and/or Lexmark Patents.

RESPONSE: See data files electronically transferred to Lexmark International, Inc. by Environmental Reclamation Services on or about January 20, 2006. A CD containing the same data files was forwarded to Lexmark International, Inc. by overnight mail on February 8, 2006.

See additional data contained on a second CD forwarded to Lexmark International, Inc. by overnight mail on April 3, 2006 with the Supplemental Declaration of William Eidenmuller Pursuant to Federal Rule of Evidence 902(11).

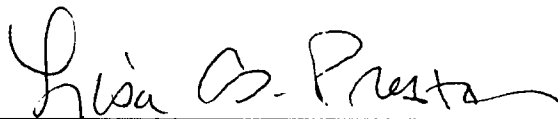
Request No. 7: Please produce all documents and things referring or relating to Lexmark's dispute with SCC, MSE, Pendl, and/or NER (Case No. 04-84-KSF, United States District Court for the Eastern District of Kentucky).

RESPONSE: None, other than the Fed. R. Civ. P. 45 Subpoena served upon Environmental Reclamation Services by Lexmark International, Inc.; the Protective Order Against Unauthorized Use or Disclosure of Confidential Information provided by counsel for Lexmark International, Inc.; Complaint for Declaratory Judgment; Lexmark International, Inc.'s Answer and Counterclaims; and, Lexmark International, Inc.'s Second Amended Answer and Counterclaims.

Request No. 8: Please produce all documents and things referring or relating to Lexmark's dispute with Clarity Imaging Technologies, Inc. and/or David Abraham, d/b/a Inter Solutions Ventures, Ltd. (Case No. 04-456-KSF, United States District Court for the Eastern District of Kentucky).

RESPONSE: None.

Respectfully submitted,



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Environmental Reclamation Services

Dated: April 3, 2006