

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

LEXMARK INTERNATIONAL, INC. :
 :
 Plaintiff, :
 : Case No. 02-571-KSF
 v. :
 :
 STATIC CONTROL COMPONENTS, INC. :
 :
 Defendant. :

MOTION OF AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

The Automotive Aftermarket Industry Association, (“AAIA”) by and through counsel, respectfully moves this Court pursuant to Rule 7 of the Federal Rules of Civil Procedures and Rule 7.1 of the Local Rule of this Court, for Leave of AAIA to Adopt the Memorandum In Nature of an Amicus Curiae Brief in Support of Defendant filed by Automotive Parts Rebuilders Association, and for AAIA to participate in this case as an amicus curiae.

George W. Keeley
Thomas E. Roche
Keeley, Kuenn & Reid
150 North Wacker Drive, #1100
Chicago, IL 60606
(312) 782-1829
FAX: (312) 782-4868

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**MEMORANDUM IN SUPPORT OF MOTION OF
AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION**

The Automotive Aftermarket Industry Association, by and through counsel, files this memorandum pursuant to Rule 7 of the Federal Rules of Civil Procedures and Rule 7.1 of the Local Rule of this Court, in support of its motion for leave of AAIA to adopt the Memorandum In Nature of an Amicus Curiae Brief in Support of Defendant filed by Automotive Parts Rebuilders Association (“APRA Brief”), and to participate in this case as an amicus curiae.

Counsel for the Automotive Aftermarket Industry Association (“AAIA”) has obtained the consent of defendant Static Control Components, Inc. and proposed amicus curiae Automotive Parts Rebuilders Association to this motion. Consent was not obtained from plaintiff Lexmark International, Inc.

1. The role of an amicus curiae is generally to call the Court’s attention to law, facts or circumstances when their application may not be apparent to the Court. In this case application of the Digital Millennium Copyright Act in the manner advocated by plaintiff will cause widespread disruption and adversely affect businesses in many industries outside the toner

cartridge industry. One of these industries is the motor vehicle replacement parts industry in which the members of AAIA are engaged.

2. AAIA is a non-profit trade association whose 2,700 member companies conduct business in the motor vehicle aftermarket industry. This industry supplies the replacement parts (newly manufactured, rebuilt and remanufactured), supplies and services needed to repair, maintain and accessorize motor vehicles after they are sold to their owners by a car or truck dealer. Today's U.S. motor vehicle aftermarket is a \$250 billion industry employing over 3.7 million people at over 500,000 business locations. The industry provides the vehicle owner with a competitive alternative to having his or her vehicle repairs performed by the vehicle manufacturer's dealer network. Freedom of choice for the vehicle owner is essential since the average age of passenger cars and light trucks was estimated in 2001 at 9.3 years and 8.5 years respectively. Vehicle registration in both categories totaled 209.1 million in 2001.

3. Movant AAIA has a real and substantial interest in the outcome of this case. Like the companies which use defendant's products, AAIA's members manufacture, distribute, sell and install motor vehicle replacement parts necessary to service and repair motor vehicles. Motor vehicle replacement parts may contain a computer chip which communicates with the electrical control unit (ECU) or computer of the motor vehicle. Like plaintiff, the manufacturer of a motor vehicle could program an authentication sequence or "secret handshake" into the ECU so that a motor vehicle replacement part could not be used in that vehicle. If it is determined that the creation of technology to allow use of parts other than those which contain the manufacturer's "secret handshake" or lockout devices is illegal under the Digital Millennium Copyright Act, said lockout devices could be used to destroy the market for motor vehicle replacement parts produced by the independent automotive aftermarket.

4. It would be desirable for the Court to understand the scope and extent that an adverse decree against the defendant on the Digital Millennium Copyright Act issue will have on industries outside the toner cartridge industry so that the Court can properly assess whether Congress, in enacting 17 U.S.C. Section 1201(a)(2), intended to permit manufacturers to prevent repair and reuse of goods after sale of those goods or to prevent a work protected under the Act from being accessed for any reason other than the illegal copying or use of the work.

5. The APRA Brief provides relevant material on the manner in which a lockout device such as Lexmark's would affect use of motor vehicle replacement parts in the motor vehicle repair and service industry.

6. The APRA Brief also shows how plaintiff's interpretation of Digital Millennium Copyright Act conflicts with provisions of the Clean Air Act intended to prevent use of computer access codes to limit competition in the motor vehicle aftermarket.

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Chicago, IL 60606
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ORDER

This matter having come before the Court upon the Motion of the Automotive Aftermarket Industry Association (“AAIA”) for Leave to Adopt the Memorandum in the Nature of an Amicus Curiae Brief in Support of Defendant Filed by the Automotive Parts Rebuilders Association, and for AAIA to participate in this case an amicus curiae, and it appears to the Court that good cause therefore having been shown, it is hereby;

ORDERED, that the motion be and is hereby granted.

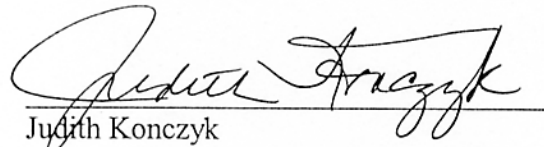
KARL S. FORESTER
CHIEF JUDGE

PROOF OF SERVICE

I, Judith Konczyk, a non-attorney, state on oath that I served the foregoing Motion of Automotive Aftermarket Industry Association, Memorandum in Support of Automotive Aftermarket Industry Association and Proposed Order to:

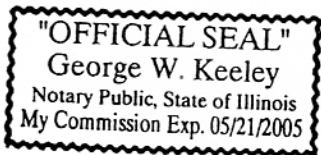
SEE ATTACHED SERVICE LIST

to the addresses shown on the attached service list before 5:00 p.m. on February 3, 2003 with proper postage prepaid.


Judith Konczyk

SUBSCRIBED and SWORN to
before me this February 3, 2003.


NOTARY PUBLIC



SERVICE LIST

Charles E. Shivel, Jr.
William L. Montague, Jr.
Steven Brian Loy
Stoll, Keenon & Park, LLP
300 W. Vine Street #2100
Lexington, KY 40507-1380

Joseph M. Potenza
Banner & Witcoff, Ltd.
1001 G Street, NW, 11th floor
Washington, DC 20001

Christopher J. Renk
Binal J. Patel
Jason S. Shull
Timothy C. Meece
Banner & Witcoff, Ltd.
10 S. Wacker Drive, #3000
Chicago, IL 60606

W. Craig Robertson, III
Eva Christine Lewis
Wyatt, Tarrant & Combs LLP
250 W. Main Street
1700 Lexington Financial Center
Lexington, KY 40507-1746

William H. Hollander
Steven L. Snyder
Wyatt, Tarrant & Combs
500 West Jefferson Street
PNC Plaza
Louisville, KY 40202

Skip London
Static Control Components, Inc.
3010 Lee Avenue
PO Box 152
Sanford, NC 27331

Matthew F. Weil
McDemott, Will & Emery
18191 Von Karman Avenue, #500
Irvine, CA 92612-0187

Bernt W. von Grabe
887 Sugarhouse Court
Fort Orange, FL 32129

Michael J. Conlon
Conlon, Frantz, Phelan & Pires, LLP
1818 N Street, NW, #700
Washington, DC 20036