

Consumer Protection and E-Commerce in the Algerian Legislation

حماية المستهلك والتجارة الالكترونية في التشريع الجزائري



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Abstract:

E-contract is deemed the main instrument of e-commerce; however, the e-consumer encounters numerous risks stemming from the merchant, who embodies the opposing party in the contractual relationship, often exhibiting fraudulent and deceptive conduct towards the consumer, the weaker party. The online presentation of products or services often features significant exaggeration in advertising, which considerably impacts consumer orientation, particularly given the Internet's extensive reach, influence, promotional capabilities, and rapid accessibility. This necessitates protecting the e-consumer from fraud and deception encountered in e-contracts.

key words: E-commerce; Consumer; Contract; Fraud; Legal protection.

المخلص:

يعتبر العقد الإلكتروني أهم وسيلة من وسائل التجارة الإلكترونية ، إلا أن المستهلك الإلكتروني يواجه العديد من المخاطر قد يكون مصدرها التاجر الذي يمثل الطرف الآخر في العلاقة التعاقدية الذي كثيرا ما يتسم سلوكه بالغش والتحايل قبل المستهلك باعتباره الطرف الضعيف ، ويصاحب عادة عرض السلع أو الخدمات عبر الانترنت الكثير من المبالغة في الدعاية، مما تجعل هذا الأمر يؤثر بشكل واسع على توجه المستهلك ، خاصة إذا ما أخذنا في الاعتبار قوة شبكة الانترنت من حيث الانتشار، التأثير، الدعاية، الإعلان و القدرة على النفاذ بسرعة ، كل ذلك يستوجب حماية المستهلك الإلكتروني من الغش والتحايل الذي يتعرض له من خلال عقود التجارة الإلكترونية .

الكلمات المفتاحية: التجارة الإلكترونية؛ المستهلك؛ العقد؛ الغش؛ الحماية القانونية.

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Introduction:

The contract serves as the principal source of obligations and is regulated by particular legislative provisions that delineate its legal structure. Scientific and technological developments have enabled the swift and seamless execution of contracts between individuals within global transactions that were once challenging. As a result, consumers have transitioned from basic natural items to more intricate and sometimes perilous goods and services. The advancement of information and communication technology has established a new paradigm in economic and commercial interactions. Trade has evolved from its conventional form to a contemporary model that predominantly depends on sophisticated communication technologies, resulting in e-transactions that are fundamentally rooted on the Internet within the digital economy.

Legally speaking, commercial transactions have transitioned from conventional contracts to e-contracts, requiring acknowledgement of both traditional and e-consumers. Legislators have intervened to protect the rights of e-customers, who frequently find themselves in a precarious situation due to the remote nature of e-contracts. The Algerian legislator promulgated Law No. 18-05 on May 10, 2018, which governs e-transactions and pertains to issues concerning e-consumers. Moreover, Law No. 09-03 concerning Consumer Protection and Fraud Prevention, as revised by Law No. 09-19, includes stipulations designed to guarantee extensive protection for e-customers.

The Algerian legislator described the e-consumer in Article 06 of Law No. 18-05 on E-Commerce as:

"Any natural or artificial person who, for return or free of charge, acquires a good or service through e-communications from an e-supplier for final use."

This topic is significant due to its foundational role in consumer protection within e-contracts, especially concerning the consumer's inherent vulnerability and the power imbalance with the seller or intermediary, who possesses a superior economic position. The primary concern pertains to the concepts of consumer protection in e-transactions and the methods for ensuring consumer safety during the pre-contractual phase, contract creation, and the execution of the e-contract.

Based on the above, the following questions are raised:

- Has the Algerian legal framework established a regulatory system for protecting e-consumers?
- What rights has the Algerian legislator granted to e-consumers in e-transactions?

- Can consumer protection rules applicable to traditional contracts be extended to e-consumer transactions?

This research paper employs a descriptive-analytical approach to evaluate the efficiency of pertinent legal requirements in protecting e-consumers.

Chapter One: Consumer Protection in the Pre-contractual Phase

Protecting e-consumers should begin prior to the finalization of the deal. This entails protecting customers from commercial advertisements, as commercial transactions are frequently preceded by many forms of online advertising. E-commercial advertising has emerged as a vital technique for competition and profit generation in online business networks.

Section One: Consumer Protection through the Pre-Contractual Duty of Information

The Algerian legislator has governed consumer information via Executive Decree No. 13-378, dated November 9, 2013, which delineates the rules and processes for consumer information. This decree specifies the manner in which this responsibility must be executed and differentiates between commodities and services¹.

Article 52 of the said Decree explicitly states the requirement for pre-contractual information as follows:

"The service provider must inform the consumer through advertising, announcements, or any other appropriate means about the services offered, pricing, potential limitations of contractual liability, and specific conditions related to the provision of the service."

Furthermore, Article 53 adds:

"The service provider must, before concluding the contract, inform the consumer of the essential characteristics of the service provided. If no written contract exists, this obligation applies before the beginning of the service."

The Algerian legislator has expressly established the obligation of information in Article 17 of Law No. 09-03. This section pertains solely to traditional contracts, lacking particular mention of e-contracts. This contrasts with the French legislator, who directly integrated consumer protection in remote contracting into consumer legislation.

¹¹ المرسوم التنفيذي رقم 13-378 المؤرخ في 09 نوفمبر 2013 المحدد للشروط والكيفيات المتعلقة بإعلام المستهلك. ج.ر. عدد 58. الصادرة بتاريخ: 18 نوفمبر 2013.

The Algerian legislator has relied on labeling as a means to inform consumers about the characteristics of goods or services, as stipulated in Article 3 of Law 03-09 on Consumer Protection and Fraud Prevention. Labeling is defined as:

"All data, writings, signs, marks, features, images, statues, and symbols related to a product, appearing on any packaging, document, sign, feature, sticker, card, seal, attached tag, or any other indication of the nature of a product, regardless of its form or medium, and irrespective of how it is applied."

Furthermore, any relevant methods that the supplier considers effective for notifying the consumer and ensuring his awareness of the item details pertaining to the contract are likewise encompassed.

Moreover, Article 18 of the same legislation mandates that labeling information be legible and permanent, stipulating that it must be inscribed in Arabic. It states:

"Labeling information, usage instructions, user manuals, product warranty conditions, and any other information stipulated by the applicable regulations must be primarily written in Arabic. Additionally, one or more other languages that are easily understood by consumers may be added, provided that they are displayed in a visible, readable, and indelible manner."

A national authority for the prevention and combat of crimes associated with information and communication technology was instituted under Law No. 09-04 on August 5, 2009, which delineates explicit regulations for the prevention and suppression of such crimes.² This entity is tasked with starting and coordinating actions to prevent and combat such offences. It functions as an autonomous administrative entity under the supervision and oversight of a steering group led by the Minister of Justice.³

Section Two: Consumer Protection from E-Commercial Advertisements

E-advertising directed at consumers constitutes an invitation to engage in an e-contract. The notion of duty in advertising has arisen from the contractual equilibrium between the parties prior to the contract's finalization, as it seeks to guarantee the free and informed consent of the weaker party in the agreement. Advertising is characterized as: "a collection of impersonal endeavors aimed at capturing the attention of societal members towards a particular product or service, motivating them to acquire or solicit it. It also includes different

²القانون رقم 04-09 المؤرخ في 05 غشت 2009 يتضمن القواعد الخاصة للوقاية من الجرائم المتصلة بتكنولوجيات الإعلام والاتصال ومكافحتها. جريدة رسمية عدد 47. الصادرة بتاريخ: 16 غشت 2009.

³المرسوم الرئاسي رقم 15-261 المؤرخ في 08 أكتوبر 2015 يحدد تشكيلة وتنظيم وكيفية سير الهيئة الوطنية للوقاية من الجرائم المتصلة بتكنولوجيا الإعلام والاتصال ومكافحتها. جريدة رسمية عدد 53. الصادرة بتاريخ: 08 أكتوبر 2015.

activities that transmit visual or aural advertising messages to the public to encourage them to purchase the advertised goods or service.”⁴Advertising includes actions intended to psychologically influence consumers, persuading them of the merits and benefits of a product or service. This is accomplished via the Internet or other e-mediums, including mobile messaging and television. Advertisements are categorized into different types based on various factors:

- Objective-based
- Covered geographical area By the nature of the advertiser's activity
- Medium-based
- By the product or service being advertised
- An e-advertisement directed to customers becomes an offer if it has the fundamental contractual terms—specifically, it must be explicit and unambiguous—such as the online posting of prices for goods and services. Nevertheless, if the e-advertisement omits these fundamental terms, such as the price, it is regarded as an invitation to negotiate or contract.⁵

Consumer Protection Rules in E-Advertising

Consumer protection against e-advertising is based on two fundamental principles:

1. Clarity of the e-advertisement
2. Prohibition of misleading e-advertising

⁴ عبد الله ذيب عبد الله محمود، حماية المستهلك في التعاقد الإلكتروني - دراسة مقارنة-، رسالة مقدمة لنيل درجة ماجستير، جامعة النجاح الوطنية، فلسطين، 2009، ص.43

⁵ بدر اسامة أحمد، حماية المستهلك في التعاقد الإلكتروني، دار الجامعة الجديدة، مصر ، 2005، ص180 .

The necessity for clarity in e-commercial advertising mandates that the advertisement must furnish adequate information regarding the product or service being presented. This guarantees that consumers make informed and deliberate choices prior to entering into a contract.

Article 11 of the International Code of Advertising Practice, enacted by the International Chamber of Commerce, delineates the obligations mandated in advertisements as follows:

"An advertisement must be clearly distinguishable, regardless of the form or medium used. When an advertisement is broadcast or published in the media, it must be presented in a way that makes it immediately recognizable as an advertisement.⁶

Most legal systems have implemented this requirement and delineated the items an advertisement must include to be lawful. The French legislator has established the need for clarity, mandating that advertisements be distinct, unambiguous, and devoid of ambiguity or uncertainty.⁷

Misleading E-Advertising is a Crime

Misleading e-advertising is considered a crime when it involves two essential elements:

- **The material element:** This involves the use of an advertising medium (such as the Internet, mobile messages, or television) that contains misleading or false information capable of confusing the consumer regarding the essential characteristics of the product or service.
- **The intentional element:** This refers to the advertiser's intent, which forms the basis of criminal liability.⁸

The European Council Directive of September 10, 1984, in its second Article, defines misleading or deceptive advertising as:

"Any advertisement that, in any way, through its presentation, contains any misleading information that may lead to the deception of those to whom it is directed or who receive it."

Furthermore, Article 3 of the directive states that misleading advertising occurs when it omits one of the essential characteristics of the advertised product.⁹

⁶ خالد ممدوح إبراهيم، حماية المستهلك في المعاملات الإلكترونية، الدار الجامعية، مصر، 2007، ص 90.
⁷ حلوي عنان نصيرة، الحماية القانونية للمستهلك عبر الإنترنت (دراسة مقارنة)، مذكرة لنيل شهادة الماجستير في القانون - فرع: مسؤولية مهنية، جامعة مولود معمري - تيزي وزو كلية الحقوق والعلوم السياسية، 2013، ص 13.

⁸ ATMANI ALI, Legal Protection of the E-Consumer in Algeria -Prior to Contract Conclusion as a Model -, Management & Economics Research Journal, Vol. 05 No. 04 (2023).p252.

⁹ عبد الله ذيب عبد الله محمود، حماية المستهلك في التعاقد الإلكتروني - دراسة مقارنة-، رسالة مقدمة لنيل درجة ماجستير، جامعة النجاح الوطنية، فلسطين، 2009، ص 07.

The French legislator has explicitly prohibited misleading and deceptive advertising, banning any form of advertisement that contains false claims, misleading offers, or deceptive statements in any way or form.

Deception in misleading advertising can relate to:

- A product or service that does not exist
- The nature of the product
- Its characteristics or main components

Additionally, with the enactment of Law 05/91 on the Generalization of the Use of the Arabic Language¹⁰, Article 19 states:

"All forms of advertising must be conducted in Arabic. Foreign languages may be used alongside Arabic only when necessary and with the approval of the competent authorities."

By imposing the mandatory use of Arabic in advertising, the legislator has reinforced one of the key consumer protection measures.

Chapter Two: Consumer Protection in E-Contracting

For an e-contract to be valid, the consumer's consent must be free from defects. To ensure its completion, the consumer must be protected against any unfair contractual terms that could infringe upon their rights.

Section One: Protecting Consumer Consent in E-Contracts

Under general legal principles, consent must be devoid of faults to be considered legitimate. In e-contracting, only valid and effective consent is acknowledged, signifying it must be devoid of any defects and provided by a party possessing legal ability.

Given the technological intricacies of e-contracts, especially regarding contracting methodologies and instruments, it is essential to analyze the impact of the e-environment on consumer consent throughout the establishment of an e-consumer contract. Moreover, the implementation of e-procedures contributes to the assurance of legitimate permission.

Conventional legal doctrines inadequately protect e-customers, as demonstrating faults in consent necessitates fulfilling stringent criteria, such as evidence of fraudulent conduct, which is challenging to establish in e-transactions.

For instance:

- **Mistake (Error):** This occurs when a buyer receives a product and claims it is not suitable for its intended use.

¹⁰القانون 91/05 المؤرخ في 16 جانفي 1991 والمتعلق بتعميم استعمال اللغة العربية، ج ر عدد 03، المعدل والمتمم بالأمر رقم: 30/96 المؤرخ في 21 ديسمبر 1996، ج ر عدد 81.

- **Fraud (Deception):** This happens when a seller creates a fake website that does not actually exist.

These instances exemplify the difficulties in demonstrating defective consent in e-consumer contracts, underscoring the necessity for enhanced consumer protection mechanisms in digital transactions. Fraud and deception in e-contracting can be alleviated by augmenting the function of certification authority or trust service providers. Their function extends beyond merely validating the legitimacy and provenance of e-contractual intent; it also encompasses affirming the gravity of that intent and thwarting fraudulent activities.

The European Directive 2000/31/EC, enacted by the European Parliament and Council on June 8, 2000, concerning specific legal aspects of information society services, particularly in e-commerce within the internal market, prohibits member states from imposing obstacles to the recognition of e-contracts. It also prompts them to design legislation that facilitates e-transactions.¹¹

French Legislation on Consumer Protection : The French legislator has acted to protect consumers, recognizing them as the more vulnerable party in e-transactions. Many transactions necessitate particular formality, including written agreements including specified stipulations.

French Law No. 230/2000 on E-Signatures suggests that the legal formalities necessary for contracts encompass more than just a method of verification. Rather, they include writing as a fundamental contractual component or a prerequisite for validity.¹²

Section Two: Protecting Consumers from Unfair Terms

Economic trends and financial disparities between contracting parties frequently enable firms to enforce pre-determined contractual conditions on consumers, precluding any opportunity for negotiation. The pre-established terms, referred to as unfair contractual terms, create an imbalance in the rights and obligations of the parties, hindering specific agreements between suppliers and consumers.

The European Directive of April 13, 1993, regarding unfair conditions in consumer contracts, delineates unfair terms in Article 3(1) as follows:

"Any contractual term that creates a significant and clear imbalance between the rights and obligations of the parties to the detriment of the consumer, contrary to the principle of good faith."

¹¹ بدر أسامة أحمد، حماية المستهلك في التعاقد الإلكتروني، دار الجامعة الجديدة، مصر، 2005، ص240.
¹² أحمد محمد الرفاعي، الحماية المدنية لمستهلك، دار النهضة العربية، ص189.

Similarly, the French Consumer Protection Law of 1995 states:

"Unfair terms in contracts concluded between suppliers and non-suppliers or consumers are those whose subject matter or effects create a significant imbalance between the rights and obligations of the parties to the contract."¹³

Consequently, both European and French legislation seek to protect consumers against standardized contractual provisions that advantage companies, thus promoting equitable and transparent e-transactions. The description presented by the European directive is clearer, indicating that legal protection against unfair terms does not extend to contract conditions established between the parties. This encompasses e-consumer contracts established by email, wherein e-communications are transmitted over the internet, facilitating the exchange of thoughts, suggestions, and perspectives, and in which the consumer engages in negotiations with the supplier. To protect the vulnerable party—the consumer—most national legislations have opted to provide protection in two primary dimensions:

1. Protection against unfair terms by granting the judge the authority to modify adhesion contracts.
2. Interpreting ambiguities in favor of the adhering party.

This approach has been adopted by the Algerian legislator in the Civil Code, as well as in the provisions of Law No. 04-02 of 2004, which defines the rules applicable to commercial practices, amended and completed.¹⁴

Chapter Three: Consumer Protection During the Execution of an E-Contract

Consumer protection must encompass the execution phase of the contract, when each party is required to execute their contractual commitments. The conventional notion of obligations regulates consumer behavior; nevertheless, some contend that these regulations may inadequately protect consumers in e-transactions. Consumers require informative advice through technological services to comprehend the vast quantity of information they face. Moreover, legal assurances must be established to protect consumer rights, starting with the provision of products and services devoid of concealed defects and acknowledging the consumer's right to rescind the contract.

Section One: Protecting Consumers from Concealed Defects in E-Contracts

¹³ عبد الله ذيب عبد الله محمود، المرجع السابق، ص 72 و 73 .
¹⁴ القانون رقم 02-04 المؤرخ في 23 يونيو 2004 المحدد القواعد المطبقة على الممارسات التجارية. ج.ر. عدد 41. الصادرة بتاريخ: 27 يونيو 2004. المعدل والمتمم بالقانون رقم 06-10 المؤرخ في 15 غشت 2010. ج.ر. عدد 46. الصادرة بتاريخ: 18 غشت 2010.

A concealed defect in a product is a flaw that compromises its qualities or properties, making it unsuitable for its intended function. A product is deemed defective when it fails to perform its intended function or when its functioning is so severely compromised that the consumer would not have made the purchase had they been informed.¹⁵

Concealed defects in products that cause harm are categorized into:

- **Defects related to internal properties of the product**, including design and manufacturing defects.
- **Defects related to external factors that are not part of the product's composition**, such as defects in instructions and warnings.

A concealed defect must satisfy particular criteria: it must be obscured, substantial, and unbeknownst to the purchaser.¹⁶ These requirements guarantee optimal consumer protection while preserving transaction stability. The aforementioned conditions regarding the seller's obligation to warrant against concealed defects in a sale are equally applicable to e-sales contracts conducted online. If a consumer acquires a software program from a vendor and subsequently finds it to be defective and incapable of fulfilling its intended function—such that only an expert could discern the flaw—this would constitute a concealed and substantial defect that an average consumer would find challenging to recognize. In this instance, the seller in an e-consumer contract is required to warrant the concealed problem in the product.¹⁷

section Two: Consumer's Right to Withdraw from an E-contract

Most legal frameworks governing distant contracting, especially within the European Union, acknowledge the entitlement of remote purchasers to rescind or terminate the contract. This privilege permits consumers, within a designated timeframe, to terminate the contract by exchanging the product or returning it for a refund.

The e-consumer possesses the same right to rescind an e-contract as in conventional contracts. Given that online clients frequently acquire products without physical examination, they should possess the right to rescind the contract upon receipt of the item. This safeguards them against deception or fraud perpetrated by the seller.¹⁸

¹⁵ خالد ممدوح إبراهيم، حماية المستهلك في المعاملات الإلكترونية، الدار الجامعية، مصر، 2007، ص 243.

¹⁶ ELFODDA Mohammed'Nouacer Tahar ' The Legal protection for the e-consumer in the Algerian Legislation ,IJTIHAD Journal On Legal and Economic Studies ,Volume: 12 / Number: 02 Year 2023 ,p10.

¹⁷ حلوي عنان نصيرة، حلوي عنان نصيرة، الحماية القانونية للمستهلك عبر الإنترنت (دراسة مقارنة)، مذكرة لنيل شهادة الماجستير في القانون - فرع: مسؤولية مهنية -، جامعة مولود معمري - تيزي وزو، كلية الحقوق والعلوم السياسية، 2013، ص 55.

¹⁸ Vincent Gautrais ; Le contrat électronique international encadrement juridique, édition Bruylant Academia, 2e édition, 2003, p 28.

French legislation has adopted this strategy by implementing consumer protection regulations in 1971, 1972, and 1978 related to consumer finance, along with Law No. 21 of January 6, 1988, governing remote sales. The latest amendment of the Law No. 659-2005 on the Consumer Law, confers upon consumers the ability to return a purchased goods and obtain a refund within seven days of delivery, without the necessity of providing a rationale for their withdrawal.

Likewise, the European directive on remote contracts maintains the consumer's ability to rescind within the identical duration. According to Article 55 of the Consumer Protection Law, Lebanese legislation stipulates a withdrawal period of ten days, starting from the date of contract for services and of delivery for goods.¹⁹

The consumer's right of withdrawal is not unconditional, since it is governed by specific exclusions detailed in Article 5 of the European Directive and Article 20-121 of the French Consumer Code. The right of withdrawal is inapplicable in the following circumstances:

- Contracts for the provision of services that have already begun with the consumer's consent before the expiration of the seven-day withdrawal period.
- Contracts for the supply of goods and services whose prices are subject to fluctuations in the financial market beyond the seller's control.
- Contracts for the supply of goods manufactured according to the consumer's specifications, customized to their requirements, or goods that cannot be returned due to their nature, perishability, or susceptibility to rapid deterioration.
- Contracts for the supply of video recordings or software where the consumer has removed the packaging.
- Contracts for the supply of newspapers, periodicals, and magazines.

It is worth noting that the right of withdrawal in remote contracts is a relative right granted in favor of the consumer. Given the nature of e-contracts, the right of withdrawal is even more essential for online consumers, who are in a weaker position compared to professional sellers. This right primarily aims to protect the consumer's consent by eliminating any risks that may lead to regret. It provides the consumer with an additional period to reflect on the contract they have entered into, helping them avoid potential risks associated with hasty

¹⁹زروق يوسف ، حماية المستهلك مدنيا من مخاطر التعاقد الالكتروني- دراسة مقارنة-- كلية الحقوق جامعة زيان عاشور الجلفة (الجزائر)، ص7.

decisions, especially in an environment dominated by persuasive advertising and online marketing.

Additionally, this right enables consumers to verify whether contractual obligations have been met. If a consumer feels that their consent was incomplete, they may hesitate to fulfill their contractual obligations. In such cases, the seller is required to refund any amounts received from the consumer if the right of withdrawal is exercised.²⁰

E-commerce and Digital Usage in Algeria – Statistics Table

Source	Year/Period	Value	Item
DataReportal (2024)	Early 2024	~33.49 million users	Number of internet users
DataReportal (2024)	Early 2024	72.9 %	Internet penetration rate (of total population)
DataReportal (2024)	Early 2024	~50.65 million subscriptions	Active mobile subscriptions
DataReportal (2025)	Early 2025	~36.2 million users	Number of internet users (2025)
DataReportal (2025)	Early 2025	76.9 %	Internet penetration rate (2025)
Algeria Invest (2024)	2024	> 1.5 billion USD	E-commerce market size
Algeria Invest (2024)	2024	> 18 million cards	Number of electronic payment cards
GIE Monétique (2024)	First half of 2024	~59.99 billion DZD	Value of electronic payments

Conclusion:

E-commerce has emerged as an inescapable reality that warrants acknowledgment. Nevertheless, Arab countries lag in this domain, especially Algeria, which continues to waver in adopting global progress. The legislative foundation for consumer protection in Algerian legislation remains incomplete, featuring mainly isolated articles concerning consumer rights.

Notwithstanding attempts by multiple legal systems to govern e-transactions and protect online customers, Algeria has not yet established a comprehensive

²⁰عبد الرحمان خلفي، حماية المستهلك الالكتروني في القانون الجزائري (دراسة مقارنة)، مجلة جامعة النجاح للأبحاث(العلوم الانسانية) المجلد 67(1)، 2013، ص14.

regulatory framework. Guaranteeing such protection will significantly enhance e-commerce, which remains a growing market. The absence of legal organization in this domain signifies a considerable deficiency among Algerian legislators, rendering the field unregulated and vulnerable. This mistake may result in future complexities and challenges that will be arduous to address, particularly as Algeria progresses toward accession to the World Trade Organization and fortifies its partnership with the European Union.

Recommendations:

- Establishing a legal framework that guarantees consumer protection in e-commerce, regulates online transactions, and recognizes e-contracting methods as legally binding in civil and commercial dealings.
- Ensuring the highest levels of security for e-contracting methods, given the involvement of multiple parties in the process. This complexity makes it difficult to determine liability for damages suffered by consumers, especially with the overlap of various legal responsibility frameworks.
- Providing legal guarantees for online consumers, with specialized authorities ensuring their enforcement, thereby reinforcing the constitutional protection of consumer rights.

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