

Misleading Promotion as an Unlawful Act: An Analysis of Article 1365 of the Civil Code

Azwir Agus

University of Medan Area, Indonesia; azwiragus@staff.uma.ac.id

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ABSTRACT

Promotional practices are an important instrument in trade and marketing activities. However, in practice, many businesses engage in misleading promotions, which can be detrimental to consumers. Misleading promotions can include information that is incorrect, incomplete, or creates a false perception of the goods or services being offered. This paper aims to analyze misleading promotions as an unlawful act based on Article 1365 of the Civil Code (KUHPerdata). The research method used is normative legal research with a statutory and conceptual approach. The results show that misleading promotions fulfill the elements of an unlawful act, namely the existence of an act, the act is unlawful, there is an error, the occurrence of a loss, and a causal relationship between the act and the loss. Thus, businesses can be held civilly liable for losses experienced by consumers due to misleading promotions.

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Corresponding Author:

Azwir Agus

University of Medan Area, Indonesia; azwiragus@staff.uma.ac.id

1. INTRODUCTION

The dynamics of business developments that are taking place along with the rapid progress of information technology and the transformation of the digital economy have encouraged business actors to maximize various forms of promotional strategies as the main instrument in attracting the attention and interest of consumers. (Kamila, 2025) Promotional activities are no longer limited to conventional methods, but have expanded to electronic media, digital commerce platforms, and social media, which have extensive reach and significant persuasive power. In this context, promotional information occupies a highly strategic position, serving as the primary basis for consumers in considering and determining economic choices, particularly those related to the quality, benefits, and price of goods and/or services offered. (Ramadhani & Ali, 2025)

However, the increasing intensity of business competition often encourages business actors to carry out promotions that are excessive (overclaim), manipulative, or not in line with the real conditions of the product. (Keysi Rahmawati, 2025) This kind of practice can be categorized as misleading promotion, namely the actions of business actors who convey false, incomplete information, or create a wrong perception regarding the characteristics, quality, benefits, or price of goods and/or services. From a civil law perspective, this action is contrary to the principle of good faith (goede trouw) as stated in Article

1338 paragraph (3) of the Civil Code, which requires every agreement to be carried out in good faith, including from the pre-contractual stage, such as in promotional activities and product offerings.

Misleading promotions basically have the potential to cause losses to consumers, both in the form of material and immaterial losses. (Sri Maharani MTVM, 2025) Material losses can be financial losses arising from a discrepancy between promotional information and the actual condition of the product, while immaterial losses can be in the form of disappointment, inconvenience, and decreased consumer trust. Within the framework of legal protection theory, Satjipto Rahardjo emphasized that the law must act as a means of protection for parties who are structurally in a weak position. In the legal relationship between business actors and consumers, this imbalance in bargaining power requires the guarantee of effective legal protection against detrimental business practices. (Wahju Iswandy, 2025)

Normatively, consumer protection against misleading promotional practices has a strong legal basis in Law Number 8 of 1999 concerning Consumer Protection. Article 4 letter c of the Consumer Protection Law guarantees consumers the right to obtain correct, clear, and honest information regarding the condition and guarantees of goods and/or services. Conversely, Article 7 letter b of the Consumer Protection Law imposes an obligation on business actors to provide correct, clear, and honest information regarding the goods and/or services traded, including explanations regarding their use, repair, and maintenance. This provision emphasizes that information disclosure is a legally binding obligation for business actors. (Januarilla & Wulansari, 2024)

Furthermore, Article 9 paragraph (1) of the Consumer Protection Law expressly prohibits business actors from offering, promoting, or advertising goods and/or services in a manner that is not true or as if they have a certain quality, benefit, or price that does not correspond to reality. Article 10 of the Consumer Protection Law also prohibits business actors from conveying misleading statements regarding the price, use, condition, or guarantee of the product in promotional activities. Violation of these provisions not only has implications for administrative and criminal sanctions, but also opens up opportunities for consumers to demand compensation through civil mechanisms. (Lanosta, 2021)

Within the general civil law framework, misleading promotions can be classified as an unlawful act as defined in Article 1365 of the Civil Code, which requires anyone who, through their fault, causes harm to another person to provide compensation. According to M. Yahya Harahap, the element of "unlawful" in the article must be understood broadly, not only including violations of the law, but also acts that violate the subjective rights of others, contradict the perpetrator's legal obligations, and deviate from the principles of propriety, prudence, and morality in social life.

This view aligns with Subekti's opinion, which states that unlawful acts do not always have to be violations of written norms, but can also be actions that are socially and morally deemed inappropriate and detrimental to others. This understanding aligns with the classic jurisprudence of *Lindenbaum vs. Cohen* (Hoge Raad, January 31, 1919), which has become an important reference in Indonesian judicial practice in interpreting the concept of unlawful acts broadly.

Furthermore, misleading promotional practices are not only theoretical but also occur in practice and have attracted the attention of the public and regulatory authorities. Several news reports have revealed the prevalence of fictitious promotions and factually unsubstantiated claims, particularly through digital platforms and social media. The Indonesian Food and Drug Monitoring Agency (BPOM), for example, discovered and took action against products promoted online with claims of benefits that could not be scientifically proven, potentially misleading and detrimental to consumers. This practice clearly violates consumers' rights to correct, clear, and honest information as stipulated in Article 4 letter c of Law Number 8 of 1999 concerning Consumer Protection and contradicts the obligation of business actors to act transparently and in good faith as stipulated in Article 7 letter b of the Consumer Protection Law.

Furthermore, the phenomenon of fictitious promotions often occurs during major e-commerce promotions, where consumers are offered extreme discounts or prizes that are never actually realized. This practice not only reflects a violation of business ethics but also violates the prohibition on misleading promotions as stipulated in Articles 9 and 10 of the Consumer Protection Law. If such promotions cause harm to consumers, then legally they can be qualified as an unlawful act under Article 1365 of the Civil

Code because they fulfill the elements of an act, unlawful nature, fault, loss, and a causal relationship. Thus, cases of fictitious promotions revealed through media coverage further emphasize the importance of synergy between the Consumer Protection Law and the provisions on unlawful acts in the Civil Code as a basis for civil liability for business actors and as an effective instrument for consumer protection.

Thus, misleading promotional practices can be considered as unlawful acts because they are contrary to the provisions of the Consumer Protection Law, violate the principle of good faith as regulated in Article 1338 paragraph (3) of the Civil Code, and fulfill the elements of unlawful acts according to Article 1365 of the Civil Code, namely the existence of an act, unlawful nature, error, loss, and a causal relationship between the act and the loss. The integration between the provisions of the Civil Code and the UUPK provides a solid legal basis for consumers to demand civil liability from business actors, while also emphasizing the importance of honesty, transparency, and ethics in promotional practices as part of fair business implementation.

Therefore, this paper examines the legal aspects, namely: What is the concept of misleading promotions in trade activities according to civil law?; Can misleading promotions be qualified as unlawful acts based on Article 1365 of the Civil Code?; What is the form of civil liability of business actors towards consumers due to misleading promotions?

2. METHODS

This research is a normative legal research that is descriptive-analytical in nature with a focus on the study of positive legal norms related to misleading promotions as an unlawful act. (Sukanto, 2009) The approach used includes a statutory approach by examining Article 1365 and Article 1338 paragraph (3) of the Civil Code, Law Number 8 of 1999 concerning Consumer Protection. In addition, a conceptual approach is used by examining the principles, doctrines, and opinions of legal experts regarding unlawful acts, the principle of good faith, and consumer protection. The legal materials used consist of primary legal materials in the form of laws and court decisions, secondary legal materials in the form of books, scientific journals, and related academic works, and tertiary legal materials as supporting materials. All legal materials are analyzed qualitatively through deductive reasoning methods to draw conclusions from general legal norms to specific legal problems.

3. FINDINGS AND DISCUSSION

The Concept of Misleading Promotions from a Civil Law Perspective

Misleading promotions essentially refer to the actions of business actors who convey promotional messages that do not correspond to the actual situation, either because the information is inaccurate, incomplete, or packaged in such a way that it creates a false perception in the minds of consumers regarding the nature, quality, use, price, or guarantee of a product and/or service. This form of deception can arise through factual claims that cannot be verified as true, the omission of important information, or the selective presentation of data that has the potential to influence consumers' rational judgment. In the legal relationship between business actors and consumers, promotional information plays a decisive role because it is the main basis for consumers in forming their intentions and making decisions to transact. (Dio Afriyanto Minta, Agustinus Hedewata, 2024)

Viewed from a civil law perspective, misleading promotional practices clearly contradict the principles of good faith and propriety, which are the main pillars of contract law. The provisions of Article 1338 paragraph (3) of the Civil Code emphasize that every agreement must be carried out in good faith, which not only binds the parties at the contract implementation stage, but also from the pre-contractual phase. Thus, promotional activities and product offerings are part of the contractual process that demands honesty, openness, and a prohibition on misleading consumers. (Erika Lehany Erungan, Meiske Tineke Sondakh, 2010)

In addition to being contrary to the general principles of civil law, misleading promotions also violate the legal regime of consumer protection as stipulated in Law Number 8 of 1999 concerning

Consumer Protection. Article 4 letter c of the Consumer Protection Law guarantees consumers' rights to correct, clear, and honest information regarding goods and/or services, while Article 7 letter b of the Consumer Protection Law imposes an obligation on business actors to convey accurate and transparent information. Furthermore, an explicit prohibition against promotions or offers that are false or misleading is emphasized in Articles 9 and 10 of the Consumer Protection Law, both regarding the quality, benefits, price, and guarantees of traded products.

In the context of contract law, the delivery of misleading promotional information can affect the agreement-making process and potentially lead to a defective will (*wilsgebreken*). Consumer consent arising from misleading information does not fully reflect free will, as it is formed based on error or deception. The legal consequence of this condition is the possibility of the agreement being declared void or voidable in accordance with the provisions of Article 1320 of the Civil Code, particularly regarding the failure to fulfill the elements of a valid agreement. (Ahmad Jalaludin Arroddi, Andika Ramadhan & Denis Zakia Muhammad, Depi Dwi Pamungkas, 2024)

In addition to impacting the validity of the agreement, misleading promotions also give rise to legal liability for losses suffered by consumers. If the promotion causes losses, whether economic or non-economic, the business actor can be held accountable under Article 1365 of the Civil Code concerning unlawful acts. Misleading promotional practices meet the elements of unlawful acts because they violate the business actor's legal obligations, harm consumer rights, and conflict with the principles of prudence and propriety in social life.

Thus, within the framework of civil law, misleading promotions are not merely positioned as a violation of business ethics, but rather as a legal act with real legal consequences. These legal consequences include the cancellation of agreements, the obligation to provide compensation, and the imposition of other sanctions as stipulated in the Consumer Protection Law. Therefore, regulating and enforcing laws against misleading promotional practices are crucial instruments for ensuring consumer protection while encouraging the creation of business practices based on honesty, fairness, and legal certainty.

One concrete example reflecting the practice of fictitious promotions or misleading advertising in Indonesia can be found in the dispute between Ludmilla Arief as a consumer and PT Nissan Motor Indonesia (PT NMI) as a business actor. This dispute began with PT NMI's promotional activities through online media, which stated that the Nissan March vehicle had a fuel efficiency level of around 18.5 kilometers per liter. This claim became a major factor influencing consumer decisions to make purchases, because the fuel efficiency information was understood not merely as a technical specification, but as a determining economic consideration in choosing a product.

After completing the purchase, the consumer discovered that the vehicle's performance did not match the efficiency claims made in the promotional materials. This discrepancy between the promotional information and the actual condition of the product resulted in financial losses and a loss of trust in the business. Therefore, the consumer filed a complaint through the consumer dispute resolution mechanism.

In the dispute resolution process, the Jakarta Consumer Dispute Resolution Agency (BPSK) through Decision Number 099/Pts.A/BPSK-DKI/II/2012 stated that PT NMI had violated the provisions of Law Number 8 of 1999 concerning Consumer Protection, specifically regarding the prohibition on conveying false or misleading promotional information as regulated in Article 9 paragraph (1) letter k and provisions regarding guarantees and conditions of goods in Article 10 letter c. Based on these considerations, BPSK ordered the cancellation of the sales and purchase agreement and the return of vehicle purchase funds to consumers as a form of restoration of the rights of consumers who have been harmed.

PT NMI subsequently filed an objection with the South Jakarta District Court, but the application was rejected through Decision Number 130/Pdt.G/2012/PN.Jkt.Sel. The court affirmed the authority of BPSK in examining and deciding consumer disputes and confirmed the finding that the promotional information conveyed by the business actor was misleading. Further legal efforts in the form of

cassation filed by PT NMI to the Supreme Court also did not produce results, as reflected in Supreme Court Decision Number 659 K/Pdt.Sus/2012 which confirmed previous decisions and charged court costs to the business actor. In its consideration, the Supreme Court emphasized that the delivery of promotional information that does not correspond to the facts is a violation of consumer rights as guaranteed in the Consumer Protection Law, so that consumers are entitled to fair legal protection and recovery.

The ruling confirms that the use of promotional claims that do not reflect the actual condition of the product can have real legal consequences for business actors, both in the administrative and civil realms, including the cancellation of agreements and the obligation to refund consumers. Thus, this case demonstrates that legal liability for misleading promotions does not stop at the normative level of consumer protection, but can be enforced concretely through judicial mechanisms.

Misleading Promotion as an Unlawful Act

The provisions of Article 1365 of the Civil Code place every act that violates the law and causes harm to another party as the basis for the emergence of an obligation to compensate the perpetrator. (Cevitra & Djajaputra, 2023) This norm serves as a general basis for civil liability outside of contractual ties and is designed with a broad scope. In the legal relationship between business actors and consumers, misleading promotional practices can be classified as unlawful acts as long as they meet the elements specified in Article 1365 of the Civil Code, namely the existence of the act, the unlawful nature, fault, loss, and a causal relationship.

The element of an act is fulfilled through the active actions of business actors in disseminating promotional information to consumers. This information can be conveyed through various means, both conventional media and digital platforms, with the primary goal of influencing consumer considerations and choices in making transactions. In civil law, the definition of an act is not limited to physical actions alone, but also includes statements, attitudes, or legal actions that have legal consequences, including the submission of promotional claims that do not reflect the actual condition of the goods and/or services offered.

Furthermore, the element of unlawfulness must be understood comprehensively. In contemporary civil law doctrine, an act is considered unlawful not only if it contradicts written statutory regulations, but also if it violates the subjective rights of others, contradicts the perpetrator's legal obligations, deviates from the principles of propriety and prudence, or contradicts prevailing moral norms in society. This broad interpretation aligns with the principles developed since the *Lindenbaum versus Cohen* (1919) decision and has been accepted in Indonesian judicial practice. In the context of misleading promotions, the unlawful nature is reflected in the violation of the business actor's obligation to be honest and transparent as stipulated in the Consumer Protection Law and the violation of the principle of good faith in contract law.

The element of fault (*schuld*) in an unlawful act can be either intentional (*dolus*) or negligence (*culpa*). Intentional fault arises when a business actor knowingly conveys false or exaggerated promotional information to attract consumers' attention. Meanwhile, negligence occurs when a business actor fails to take adequate steps to verify the accuracy of the information conveyed, resulting in a misleading impression being created in the promotion. Within the framework of civil law, proof of fault is sufficient based on failure to comply with the standards of care that should be applied by professional and responsible business actors.

The next element is the loss experienced by the consumer. This loss can be material, such as economic loss due to a discrepancy between promotional promises and the reality of the product, or immaterial, including disappointment, inconvenience, and loss of trust in the business actor. Civil law doctrine recognizes that both forms of loss can form the basis for a claim for compensation as long as they can be reasonably proven and are directly related to the act committed.

Furthermore, there must be a causal relationship between the misleading promotional act and the loss experienced by the consumer. This causal relationship indicates that the loss would not have

occurred if the business actor had not engaged in the misleading promotional act. In judicial practice, proving the element of causality is generally done by assessing whether the promotional information significantly influenced the consumer's intentions and decision to make a transaction. If the promotion is proven to have played a decisive role in the decision-making process, then the element of causality is considered fulfilled.

Conceptually, classifying misleading promotions as an unlawful act emphasizes that consumer protection does not solely depend on the existence of a contractual relationship, but also on civil liability mechanisms outside the agreement. This approach aligns with the theory of legal protection, which views consumers as structurally weaker than businesses. Therefore, Article 1365 of the Civil Code serves as a corrective instrument to create a balance in legal relations and ensure access to justice for harmed consumers.

If all the elements of an unlawful act as stipulated in Article 1365 of the Civil Code have been fulfilled, then misleading promotional practices will result in a legal obligation for business actors to provide compensation for losses experienced by consumers. This is in line with the view of R. Setiawan who places Article 1365 of the Civil Code as the basic norm of civil liability that can be applied to any action that violates propriety and causes losses, including in legal relations between business actors and consumers. This opinion is reinforced by Mariam Darus Badruzaman, who emphasizes that the unlawful act regime functions as a means of protection when contractual mechanisms are insufficient to guarantee justice for the injured party.

In the context of interpreting the unlawful element, M. Yahya Harahap stated that following the development of the *Lindenbaum vs. Cohen* jurisprudence, the scope of unlawful acts is no longer limited to violations of written norms alone, but also includes actions that are contrary to the principles of prudence and good faith. This principle is relevant in the practice of misleading promotions, where business actors are required to convey information honestly and responsibly. This view is in line with Subekti's opinion, which states that the obligation to act in good faith has been inherent since the pre-contractual stage, including in the process of promoting and offering goods and/or services.

From the aspect of fault, JH Nieuwenhuis explained that civil liability can be imposed on the perpetrator if he or she fails to meet reasonable standards of care, even without any element of intent. This is relevant to the practice of misleading promotions that often occur due to a lack of verification of the accuracy of information. In line with this, Pitlo emphasized that business actors as professional legal subjects have a higher duty of care, so that negligence in conveying promotional information can be qualified as an error in the sense of civil law.

Regarding the elements of loss and causal relationship, Rosa Agustina stated that losses in unlawful acts are not limited to material losses, but also include immaterial losses as long as there is a rational causal relationship between the act and the resulting consequences. This approach is relevant considering that misleading promotions often cause non-economic losses, such as the loss of consumer security and trust. Furthermore, Munir Fuady emphasized that the application of Article 1365 of the Civil Code in consumer disputes has a dual function, namely as a mechanism for recovering losses and as a preventive instrument against unethical business practices.

Thus, qualifying misleading promotions as an unlawful act not only provides a legal basis for claims for compensation, but also serves as a normative tool to encourage business actors to always prioritize the principles of prudence, honesty, and responsibility in promotional activities. The doctrinal support from these civil law experts confirms that the unlawful act approach is a strong and relevant theoretical foundation in efforts to control misleading promotional practices in the Indonesian civil law system.

Civil Liability of Business Actors

Civil liability involves the obligation to provide compensation to consumers who suffer losses. This liability is a legal implication of a violation of a business actor's normative obligation to conduct business activities honestly, openly, and in good faith. Within the framework of civil law, compensation

is intended as a means of restoring the consumer's legal standing (*restitutio in integrum*), namely, restoring the consumer's position as if the unlawful act had never occurred.

From a theoretical perspective, civil liability for misleading promotions can be explained through the theory of fault liability. As Subekti argues, legal liability can only be imposed if there is an element of fault, either intentional or negligent. In the practice of misleading promotions, an element of fault can be demonstrated when a business actor knowingly conveys claims that are not in accordance with the facts or when they fail to ensure the accuracy of promotional information before conveying it to consumers. This negligence reflects a failure to meet the standards of care that should be inherent in professional business actors.

Furthermore, the civil liability of business actors can also be analyzed through risk liability theory. Mariam Darus Badruzaman argues that in legal relationships characterized by an imbalance in the parties' positions, particularly those related to the public interest, the burden of risk should be borne by the party that derives economic benefit. In the relationship between business actors and consumers, business actors occupy a dominant position and enjoy the benefits of promotional activities, so the risks resulting from misleading promotions should be fairly borne by them.

Furthermore, Indonesia's consumer protection legal regime broadens the basis for civil liability through the application of the concept of strict liability. Article 19 of Law Number 8 of 1999 concerning Consumer Protection affirms the obligation of business actors to provide compensation for losses suffered by consumers due to the use of goods and/or services. This provision demonstrates that proving fault is not always a primary requirement, as long as there is a loss and a clear causal relationship between the business actor's actions and the consumer's loss.

The forms of compensation that can be requested include both material and immaterial losses. Material losses relate to actual financial losses, such as paying a price for goods or services that does not match the quality or benefits promised in the promotion. Meanwhile, immaterial losses can include psychological suffering, disappointment, discomfort, and reduced consumer confidence and safety in the business. Rosa Agustina emphasized that compensation for immaterial losses is appropriate as long as it can be assessed fairly and proportionally by the judge.

From a legal perspective, civil liability is not solely focused on recovering consumer losses but also serves a preventive and educational purpose. Munir Fuady stated that compensation in modern civil law has a preventive role, namely preventing similar acts from occurring in the future. Therefore, the obligation to pay compensation is expected to encourage businesses to exercise increased caution, accuracy, and responsibility in preparing and delivering promotional information.

Thus, the civil liability of business actors for misleading promotional practices is a concrete manifestation of the principle of corrective justice in civil law. Through the application of compensation mechanisms based on the theory of fault, the theory of risk, and limited absolute liability, civil law functions effectively in protecting consumers while creating an ethical, healthy business climate that upholds legal certainty.

To assess whether a business actor can be held civilly liable for misleading promotional practices, a set of objective and testable legal indicators is required. These indicators serve as a legal evaluation tool to ensure that the imposition of responsibility is proportional and not arbitrary, but based on clear, rational, and accountable legal criteria. Therefore, the benchmarks used as parameters are as follows:

1. The first indicator relates to the accuracy and completeness of promotional information. Businesses can be held accountable if the information provided is proven to be factual, incomplete, or unclearly formulated, potentially leading to misinterpretation by consumers. This criterion aligns with the obligations of business actors as stipulated in Article 7 letter b and the prohibitions in Articles 9 and 10 of the Consumer Protection Law, which require that all promotional information be objectively verified and reflect the actual condition of the goods and/or services offered.
2. The second indicator concerns the fulfillment of due care standards by business actors as professional subjects. In civil law doctrine, business actors are positioned as parties with special expertise and responsibilities in their field of business. Therefore, the assessment of fault is not based

on common standards, but rather on the standards of a proper, reasonable, and responsible business actor in the relevant sector. Failure to verify, test, or implement internal control mechanisms for promotional claims can be categorized as negligence in the legal sense.

3. The third indicator is the relevance of the promotion's influence on shaping consumer intentions. Civil liability becomes significant if the misleading promotion is proven to have played a role in influencing consumers to make transactional decisions. In legal practice, this influence can be assessed based on the nature of the promotional claim, the breadth and intensity of information dissemination, and the reasonableness of consumers' use of the promotion as a basis for economic considerations.
4. The fourth indicator relates to the existence of a real, legally assessable loss. This loss can be economic or non-economic, as long as it is directly related to the misleading promotional practice. Civil law doctrine requires that the loss be demonstrably proven, either through transaction evidence, a comparison between promotional claims and the actual condition of the product, or the psychological impact experienced by consumers.
5. The fifth indicator is the causal relationship between the promotional action and the resulting loss. This element of causality indicates that the consumer loss would not have occurred without the misleading promotion. Causality assessments generally use the adequate causality approach, which determines whether the promotional action could reasonably be expected to cause the loss. If the promotion is proven to be a legally relevant cause, the causal relationship element is deemed fulfilled.
6. The sixth indicator relates to the good faith of the business actor. Assessment of good faith is not solely based on subjective statements from the business actor, but rather on actual behavior in designing, delivering, and following up on promotions. Ignoring consumer complaints, failing to provide adequate clarification, or refusing to take responsibility are indicators of a lack of good faith, further strengthening the basis for imposing civil liability.

By meeting all these indicators, civil liability for misleading promotional practices can be enforced fairly and proportionally. These indicators not only provide legal certainty for consumers but also serve as normative guidelines for businesses in conducting ethical and responsible promotional activities. From a contemporary civil law perspective, these accountability indicators emphasize the law's role as a protective instrument and a regulator against business practices that have the potential to harm the public.

4. CONCLUSION

Misleading promotions are actions that can harm consumers and violate the principles of justice and good faith in civil law. Based on an analysis of Article 1365 of the Civil Code, misleading promotions meet the elements of an unlawful act, thus subjecting businesses to civil liability. Therefore, enforcing civil law against misleading promotions is crucial as a form of consumer protection and an effort to foster healthy and responsible business practices.

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