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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

THE ROUGH NOTES COMPANY, INC.,)	
)	
Plaintiff,)	Case No. 16-cv-319
)	
vs.)	
)	
THAT'S GREAT NEWS, LLC,)	
)	
Defendant.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, The Rough Notes Company, Inc. ("Rough Notes"), brings this action against Defendant, That's Great News, LLC ("Defendant"), and states as follows:

THE PARTIES

1. Rough Notes is an Indiana corporation whose principal place of business is located at 11690 Technology Dr., Carmel, Indiana 46032-5600.
2. Defendant is a Connecticut limited liability corporation whose principal place of business is located 908 S. Meriden Road, Cheshire, Connecticut 06410.

JURISDICTION AND VENUE

3. This is an action for copyright infringement under the United States Copyright Act, 17 U.S.C. § 501, *et seq.*; and for trademark infringement, unfair competition, false designation of origin, and dilution under the Lanham Act, 15 U.S.C. §§ 1114, 1116(a), 1125(a), and 1125(c).
4. In addition to claims under federal law, this Complaint alleges unfair competition and unjust enrichment claims, which are substantially related to the federal copyright, unfair competition, false designation of origin, and trademark infringement claims.

5. This Court has original subject matter jurisdiction over the copyright and trademark infringement claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a), and 1338(b). This Court may exercise its supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

6. Venue in the United States District Court for the Southern District of Indiana is proper under 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims occurred in this District.

7. This Court has personal jurisdiction over Defendant because Defendant has engaged, and continues to engage, in acts of copyright infringement, trademark infringement, unfair competition, and other torts in this District; Defendant has purposefully directed its unlawful business activities to residents in this District; and Defendant has caused injury to Rough Notes in this District.

GENERAL ALLEGATIONS

8. Rough Notes is a famous publisher of print and online magazines.

9. Rough Notes is the exclusive owner of the content contained within its print and online magazines, including but not limited to the content found on Rough Notes' website at www.roughnotes.com, and the copyright rights therein and any registrations of such copyright rights (collectively, the "Rough Notes Copyrights").

10. Rough Notes is the exclusive owner of U.S. Registration No. 2,585,340 for the famous ROUGH NOTES[®] trademark associated with business magazines (the "Trademark"). The Trademark was registered on June 25, 2002, and is uncontestable. A copy of the Certificate of Registration for the Mark is attached as **Exhibit A**.

11. Rough Notes is also the owner of several common law marks, including the design of the Masthead for the Rough Notes magazine.

12. An example of the Rough Notes magazine Masthead is the following (the "Masthead"):



(Collectively the Trademark and the Masthead are referred to as the "Trademark"). The Masthead has been in continuous use by Rough Notes for decades.

13. Since 1878, Rough Notes has established extensive and valuable goodwill in its Trademark.

14. The Trademark has enjoyed, and continues to enjoy, an excellent reputation with the public.

15. The consuming public has come to associate the Trademark exclusively with Rough Notes and its magazines.

16. Rough Notes is committed to protecting its intellectual property rights from infringement and other misuse.

17. As a service to individuals profiled in Rough Notes' magazine, Rough Notes provides to the profiled individuals, free of charge, high-quality reprints of articles in the form of plaques.

18. Rough Notes has spent significant time and money to create the content for the Rough Notes magazine and produce, distribute, and promote the magazine and free commemorative plaques identified by the Trademark and the Masthead.

19. As a result of long, continuous and widespread use and promotion of the Rough Notes magazine, ROUGH NOTES[®] trademark and Masthead by Rough Notes in association with printed and online magazines and feature articles, as well as free plaques, the relevant consuming public identifies the Trademark and Masthead exclusively with the goods and services of Rough Notes, creating valuable intellectual property rights and goodwill for Rough Notes.

20. Rough Notes regularly applies for registration with the U.S. Copyright Office all magazines published and distributed by Rough Notes. Rough Notes Copyrights include, without limitation, Registration Nos. TX 7-988-447 and TX 7-988-464 pertaining to the October 2014 (Volume 157, Number 1) and December 2014 (Volume 157, Number 12) editions of Rough Notes magazine, respectively (the "Copyright Registrations"). (A copy of the Copyright Registrations is attached as **Exhibit B**).

21. Receipt by the Copyright Office of a complete application satisfies the registration requirement of 17 U.S.C. § 411(a). Thus, this Court has subject-matter jurisdiction over Rough Notes' copyright infringement claims.

22. At all times relevant hereto, Rough Notes has and continues to be the owner of the pertinent copyrights in the Rough Notes magazine.

23. Each Rough Notes magazine issue contains a copyright notice advising the reader that the publication is protected by the copyright laws of the United States, and that "No part of this publication may be reproduced, translated, stored in a database or retrieval system, or transmitted in any form by electronic, mechanical, photocopying, recording, or by other means, except as expressly permitted by the publisher. For permission contact Samuel W. Berman."

DEFENDANT'S BUSINESS

24. Defendant designs and manufactures customized acrylic, wood and aluminum plaques for people and companies featured in newspapers and magazines.

25. Defendant manufactures its goods by copying portions of the Rough Notes magazines created by Rough Notes.

26. Defendant manufactures its goods by copying the Trademark and Masthead of Rough Notes.

27. On information and belief, Defendant acquires Rough Notes magazine content for its products by photocopying or scanning actual print magazines or downloading or "screen grabbing" magazine content from Rough Note's website.

28. Defendant promotes its finished products by contacting individuals featured in Rough Notes' magazine through email or by telephone.

29. Defendant's marketing scheme is to produce samples of its products in electronic form, with Rough Notes' content and Trademark and Masthead reproduced therein, and distribute the samples by e-mail to persons (or by e-mail to persons asking them to view samples in electronic form using a weblink) featured in Rough Notes' magazine.

30. Defendant then solicits the featured individual to purchase a plaque from Defendant.

31. Defendant sends multiple emails to featured individuals encouraging them to purchase a plaque from Defendant and includes with the emails Rough Notes' magazine content and Trademarks on sample products.

32. The email samples and the actual plaques prominently feature Rough Notes' copyright material, the Trademark, and the Masthead. Sample email solicitations are shown on **Exhibit C**.

33. Defendant boasts that it has sold over 200,000 plaques.

DEFENDANT'S INFRINGING ACTIVITIES

34. It has come to Rough Notes' attention that Defendant is infringing and otherwise misusing the Rough Notes Copyrights and the Trademark.

35. Defendant also markets its products at its website. The website includes numerous images of plaques containing pages from various publications, which website at one point included an example using Great Notes' copyrighted material, the Trademark, and the Masthead. Potential customers may also find web previews of plaques on Defendant's website, which examples use Great Notes' copyrighted materials, the Trademark and the Masthead. *See Exhibit D* attached hereto.

36. Defendant has marketed its products to individuals/companies featured in Rough Notes' magazines, which individuals/companies are residents of numerous States, including, but not limited to, Indiana and Florida. Attached as **Exhibit C** are emails from Defendant to Indiana and Florida residents featured in Rough Notes' magazine.

37. **Exhibit C and D** contain images of plaques Defendant offers to sell. The images contain pages reproduced from Rough Notes' magazine, and the Trademark and Masthead of Rough Notes.

38. The promotional emails and web site previews from Defendant and Defendant's website incorporate materials owned by Rough Notes and protected under U.S. Copyright Laws and registered with the U.S. Copyright Office.

39. The promotional emails from Defendant and Defendant's website include Rough Notes' Trademark and the Masthead, which are trademarks of Rough Notes that consumers recognize and associate with Rough Notes and its magazines and related goods and services.

40. The plaques produced by Defendant and marketed and distributed to customers in Indiana and Florida (and other States) include reproductions of Rough Notes' original content protected under U.S. Copyright Laws and registered with the U.S. Copyright Office.

41. The plaques produced by Defendant and marketed and sold to customers in Indiana and Florida (and other States) contain the Trademark and Masthead of Rough Notes.

42. This use of the Trademark and Masthead could cause consumers to mistakenly believe that there is an affiliation between Rough Notes and Defendant, that Rough Notes has endorsed the solicitations, or that Rough Notes has otherwise approved Defendant's use of the Mark, all in violation of Sections 32 and 43(a) of the Federal Lanham Act, 15 U.S.C. §§1114 and 1125(a).

43. Defendant's use of the Trademark and Masthead in this manner is obviously a blatant attempt to trade on the goodwill that Rough Notes has acquired in the Trademark and Masthead.

44. Rough Notes has received complaints from individuals profiled in the Rough Notes' magazine about Defendant's solicitations including complaints that they have received an excessive number of contacts from Defendant by which Defendant is attempting to sell its goods. Rough Notes also notes that Defendant's goods, in Rough Notes' opinion, are of poor quality, further impugning the professional reputation of Rough Notes.

45. Rough Notes has received communications from individuals who erroneously believed Defendant was associated with Rough Notes or was offering its goods with Rough Notes' permission or endorsement.

46. On October 23, 2015, Rough Notes contacted Defendant, in writing, and requested that Defendant cease and desist using Rough Notes' copyright materials, Trademark and Masthead without Rough Notes' permission. A copy of this letter is attached hereto as **Exhibit E**.

47. Although Defendant has responded to Rough Notes' letter, it has not ceased using Rough Notes' copyright materials, Trademark and Masthead without Rough Notes' permission and continues to willfully and intentionally use Rough Notes' copyright materials, Trademark and Masthead without permission.

48. Defendant failed, and continues to fail, to immediately and permanently cease using the Mark in any and all manners, including but not limited to, ceasing use of the Trademark and Masthead in connection with its solicitations.

49. All conditions precedent to the prosecution of Rough Notes' claims have occurred, have been performed, or have been excused or waived.

**FIRST CAUSE OF ACTION
(Copyright Infringement)**

50. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

51. Rough Notes owns valid copyrights and a federal copyright registration in Rough Notes' magazines.

52. Rough Notes also has pending with the U.S. Copyright Office applications for registration of the copyright in Rough Notes' magazines, which were filed not later than three (3) months after the first publication of the respective magazines under 17 U.S.C. § 412.

53. The rights of duplication, distribution and public display of Rough Notes' magazines and magazine content are three exclusive rights granted to Rough Notes under U.S. Copyright Law, 17 U.S.C. §§ 106(1), (3) and (5).

54. Defendant had access to the Magazines or copies thereof, either in print or online from Rough Notes' website.

55. Without authorization from Rough Notes, or right under law, Defendant has unlawfully made copies of Rough Notes' magazines and magazine content and has unlawfully displayed the works on its website and in emails and distributed the works as plaques in violation of the exclusive rights granted Rough Notes under the Copyright Act, 17 U.S.C. § 106.

56. Defendant has violated and is continuing to violate Rough Notes' exclusive rights in its works by copying Rough Notes' magazines and Magazine content, preparing derivative works from Rough Notes' magazines, offering to sell or distribute products that infringe the copyright in the magazines, or selling or distributing products that infringe the copyright in the magazines.

57. Defendant's activities constitutes infringement of Rough Notes' exclusive copyrights protected under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*

58. Defendant's infringing activities have been done knowingly, willfully, intentionally and purposefully, in disregard of, and with indifference to, the rights of Rough Notes.

59. As a result of Defendant's infringement of Rough Notes' exclusive rights under copyright law, Rough Notes is entitled to relief under 17 U.S.C. § 504, including, at Rough Notes' election, either actual damages or profits or statutory damages of up to \$150,000 per work infringed and its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

60. The conduct of Defendant causes and, unless enjoined and restrained by this Court, will continue to cause Rough Notes great and irreparable injury that cannot fully be compensated or measured in money damages. Pursuant to 17 U.S.C. § 502, Rough Notes is entitled to injunctive relief permanently enjoining defendant from manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or publicly displaying any material bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Rough Notes' magazines or magazine content.

61. Pursuant to 17 U.S.C. § 503, Rough Notes is entitled to an order directing Defendant to destroy all copies of the Magazines, or portions thereof, made in violation of Rough Notes' copyrights, including electronic and paper versions, as it has no adequate remedy at law, the balance of hardships favor Rough Notes, and the public interest would thereby be served.

SECOND CAUSE OF ACTION
(Federal Unfair Competition & False Designation of Origin)

62. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

63. Defendant's use of the Trademark and the Masthead to identify Defendant's goods represents a false designation of origin, and false and misleading representations of fact that has caused, or is likely to cause, confusion, mistake and deception as to the affiliation, connection or association between Defendant's goods and the goods, services and commercial activities of Rough Notes, all in violation of 15 U.S.C. § 1125(a).

64. Defendant's use of the Trademark and Masthead in connection with Defendant's goods represents commercial advertising and promotion that misrepresents the nature, characteristics and qualities of Defendant's goods and commercial activities.

65. Defendant's use of Rough Notes' Trademark and Masthead falsely suggests that Rough Notes is the source or a sponsor of Defendant's goods, or that Defendant has Rough Notes' permission or endorsement to offer Defendant's goods.

66. Defendant's actions have damaged Rough Notes' business, reputation and goodwill and, unless enjoined, will cause, or are reasonably likely to cause, irreparable harm to Rough Notes for which there is no adequate remedy at law.

67. Defendant's false advertising is harmful to consumers who may rightfully believe Defendant's products are sourced from Rough Notes or are authorized or endorsed by Rough Notes when they are not.

68. Defendant should be, upon final hearing, permanently enjoined from using the ROUGH NOTES trademarks and the Masthead pursuant to 15 U.S.C. § 1116.

69. Rough Notes is entitled, under 15 U.S.C. § 1117, to recover from Defendant: (i) Defendant's profits, (ii) damages sustained by Rough Notes, (iii) the costs of this action, and (iv) for intentional infringement, bad faith and willful conduct, three times profits or damages, whichever is greater, and attorneys' fees.

70. Rough Notes seeks an order from this Court under 15 U.S.C. § 1118, compelling Defendant to destroy all materials bearing the words ROUGH NOTES or the Masthead, including print and electronic images and website content.

**THIRD CAUSE OF ACTION
(Federal Trademark Infringement)**

71. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

72. This is a claim for trademark infringement arising under 15 U.S.C. § 1114.

73. Such infringement and dilution entitles Rough Notes to injunctive relief, to recover triple the amount of any profits Defendant earned or damages sustained by Rough Notes as a result of Defendant's infringement, attorneys' fees, and the cost of any action.

**FOURTH CAUSE OF ACTION
(Common Law Trademark Infringement)**

74. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

75. Defendant's acts, practices and conduct, as alleged herein, violate Rough Notes' common law rights in that Defendant's unauthorized and infringing use in commerce of the Trademark and the Masthead ("Rough Notes Marks") in connection with the sale, offering for sale, distribution, or advertising of any goods or services that are related to Rough Notes' goods and services is likely to cause confusion, or to cause mistake, or to deceive.

76. Defendant has, without Rough Notes' consent, used in commerce the Rough Notes Marks in connection with the sale, offering for sale, distribution, and/or advertising of Defendant's goods and services.

77. Defendant has, without Rough Notes' consent, used the Rough Notes Marks on the Defendant's webpage and in solicitations of Rough Notes' customers.

78. Defendant's goods and services are highly related to those goods and services with which Rough Notes' Trademark is used and registered.

79. Defendant's unauthorized use of the Rough Notes Marks is likely to cause, and has caused, consumers to believe, mistakenly, that Defendant's goods and services are endorsed by or associated with, Rough Notes, when in fact they are not.

80. Upon information and belief, Defendant has and continues to intentionally misuse the Rough Notes Marks to convey an immediate commercial impression that Defendant is associated with Rough Notes, which it is not.

81. Upon information and belief, Defendant's conduct complained of herein was done willfully and with full knowledge of its false or misleading nature and with the intent to cause confusion, to mislead, and to deceive, in violation of state common law.

82. On information and belief, Defendant has unlawfully and wrongfully derived and, unless enjoined, will continue to derive, income and profits from the infringing conduct.

83. Defendant's wrongful conduct has directly and proximately damaged Rough Notes.

84. Rough Notes' business, goodwill, and reputation have been and will continue to be irreparably harmed by Defendant's activities unless Defendant is enjoined.

85. Rough Notes' remedy at law is inadequate.

86. Rough Notes has suffered and will continue to suffer irreparable injury and damages, in an amount not yet determined, for which Rough Notes is entitled to relief.

87. Rough Notes seeks damages and injunctive relief against further infringement.

**FIFTH CAUSE OF ACTION
(Federal Trademark Dilution)**

88. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

89. This is a claim for trademark dilution arising under 15 U.S.C. § 1125(c).

90. The magazines sold by Rough Notes under the Trademark and the Masthead ("Rough Notes Marks") have been widely advertised, promoted, and distributed to the purchasing public throughout the United States since 1878.

91. The magazines sold under the Rough Notes Marks have come to be known by the purchasing public throughout the United States as representing products of high quality. As a result, the Rough Notes Marks, and the goodwill associated therewith, are of great value to Rough Notes.

92. By virtue of the wide renown acquired by the Rough Notes Marks, coupled with the national distribution and extensive sale of magazines distributed under these trademarks, the Rough Notes Marks have become famous.

93. Rough Notes is informed and believes, and thereon alleges, that Defendant's actions were done willfully with intent to exploit Rough Notes's reputation and dilute the Rough Note Marks.

94. By reason of the aforesaid acts constituting trademark dilution, Rough Notes has been damaged and is entitled to monetary relief in an amount to be determined at trial.

95. Due to Defendant's actions, constituting trademark dilution, Rough Notes has suffered and continues to suffer great and irreparable injury, for which Rough Notes has no adequate remedy at law.

96. Such dilution entitles Rough Notes to injunctive relief, to recover triple the amount of any profits Defendant earned or damages sustained by Rough Notes as a result of Defendant's infringement, attorneys' fees, and the cost of any action.

**SIXTH CAUSE OF ACTION
(Common Law Unfair Competition)**

97. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

98. Defendant's use of the Trademark and the Masthead (the "Rough Notes Marks") to identify Defendant's goods represents a false designation of origin, and false and misleading representations of fact that has caused, or is likely to cause, confusion, mistake and deception as to the affiliation, connection or association between Defendant's goods and the goods, services and commercial activities of Rough Notes, all in violation of the applicable common law.

99. Defendant's use of the Rough Notes Marks in connection with Defendant's goods represents commercial advertising and promotion that misrepresents the nature, characteristics and qualities of Defendant's goods and commercial activities.

100. Defendant's use of the Rough Notes Marks falsely suggests that Rough Notes is the source or a sponsor of Defendant's goods, or that Defendant has Rough Notes' permission or endorsement to offer Defendant's goods.

101. Defendant's actions have damaged Rough Notes' business, reputation and goodwill and, unless enjoined, will cause, or are reasonably likely to cause, irreparable harm to Rough Notes for which there is no adequate remedy at law.

102. Defendant's false advertising is harmful to consumers who may rightfully believe Defendant's products are sourced from Rough Notes or are authorized or endorsed by Rough Notes when they are not.

103. Upon information and belief, Defendant's acts complained of herein were intentional, wanton, willful, and committed in bad faith and with the intent to confuse and deceive the public.

104. Defendant's acts complained of herein have caused Rough Notes irreparable harm for which there is no adequate remedy at law.

105. Defendant should be, upon final hearing, permanently enjoined from using the Rough Notes Marks pursuant to the applicable common law.

106. Rough Notes seeks an order from this Court under the applicable common law compelling Defendant to destroy all materials bearing the words ROUGH NOTES or the Masthead, including print and electronic images and website content.

107. Defendant is liable to Rough Notes for unfair competition violations under the applicable common law.

**SEVENTH CAUSE OF ACTION
(Unjust Enrichment)**

108. Rough Notes incorporates herein by reference all previous allegations contained in this Complaint as if fully set forth herein.

109. By engaging in the conduct alleged in this Complaint, Defendant has been unjustly enriched at Rough Notes' expense.

110. As a direct and proximate result of Defendant's unjust enrichment, Rough Notes has suffered, and continues to suffer damages.

111. There is no legal justification for Defendant's unjust enrichment at Rough Notes' expense.

112. Rough Notes is entitled to disgorgement from Defendant of the entire amount of such unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Rough Notes requests a judgement against Defendant as follows:

- A. Permanently enjoining and restraining Defendant, its agents, servants, employees, successors, affiliated companies, and assigns and all others acting in concert with them from:
- (1) reproducing, distributing, or publicly displaying any materials containing any content derived from Rough Notes' magazines or substantially similar to the content contained within Rough Notes' magazines; and
 - (2) selling or offering for sale any products or services bearing the name ROUGH NOTES or the Masthead, or any variations thereof, as a trademark or service mark for any goods or services;
- B. Directing Defendant to:
- (1) remove from the Internet and delete or destroy any websites, advertising, brochures, emails or other materials containing a colorable imitation of, or that is substantially similar to, the content found in any of Rough Notes' magazine or Rough Notes' website;
 - (2) notify all customers, potential customers, distributors, advertisers and other persons involved in Defendant's sale of, or attempt to sell, products or services using the copyright materials of Rough Notes or Rough Notes' trademarks that the material and trademarks are owned and controlled exclusively by and for the benefit of Rough Notes and that Defendant is not affiliated with or related to Rough Notes; and
 - (3) deliver to Rough Notes to be destroyed all print and electronic materials, labels, prints, packages, plaques, or advertisements in Defendant's possession displaying any copyright material of Rough Notes, magazine covers or other content from Rough Notes' magazines, or any Rough Notes trademark;
 - (4) cease contacting individuals featured in Rough Notes' Magazine, by email, telephone or otherwise, concerning the sale of any plaques or other goods relating to content appearing in any of Rough Notes' magazines;
- C. At Rough Notes' election under 17 U.S.C. § 504, awarding Rough Notes, instead of actual damages or profits, an award of statutory damages for each work infringed by Defendant in the amount of not less than \$750 and up to \$30,000, or up to \$150,000 for willful infringement, as the Court considers just;

- D. Awarding Rough Notes Defendant's profits and compensatory damages suffered by Rough Notes, in an amount to be proven at trial, as a result of Defendant's acts complained of herein, all trebled pursuant to 15 U.S.C. § 1117(b);
- E. Awarding Rough Notes the costs of this action, and for intentional infringement, bad faith and willful conduct, three times profits or damages, whichever is greater, and attorneys' fees;
- F. Directing that Defendant be required to account for and relinquish to Rough Notes all gains, profits, and advantages derived by Defendant through its intentional copying of Rough Notes' magazines and magazine content and the use of Rough Notes' Trademark and Masthead;
- G. To the extent Rough Notes does not receive an adequate remedy under paragraphs A-F, awarding Rough Notes equitable damages equal to the full amount by which Defendant has been unjustly enriched as a result of their unlawful activities;
- H. Awarding Rough Notes' costs, disbursements, and attorneys' fees incurred in bringing this action;
- I. Awarding Rough Notes punitive damages as provided by law; and
- J. Awarding such other and further relief as the Court deems just and proper.

DATED this 8th day of February, 2016.

Respectfully submitted,

s/ David J. Carr

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Attorneys for Plaintiff,

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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff, The Rough Notes Company, Inc., respectfully requests a trial by jury of all issues properly triable by jury.

s/ David J. Carr

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