

'Have I got a deal for you'

An advertising guide for WA motor vehicle dealers



Department of Consumer
and Employment Protection
Government of Western Australia

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Introduction

The Department of Consumer and Employment Protection recognises that advertising plays an important role in the motor vehicle sales industry. Advertising can give businesses the edge over their competitors and plays a fundamental role in attracting customers. It can mean the difference between a vehicle remaining in the yard or being sold.

Like most businesses car dealers rely heavily on the power of advertising at all levels - from national campaigns using television, radio and Press, through to the latest in electronic advertising on the internet. Whatever the level, consumers expect advertising to be fair, responsible and honest.

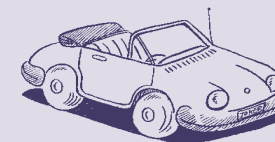
There are state and federal fair trading laws which set down the rules for advertising. Like other retail industries, the motor vehicle sales industry can not afford to ignore these laws. Specifically, the legislation includes:

- the Motor Vehicle Dealers Act 1973;
the Fair Trading Act 1987;
- the Consumer Credit
(Western Australia) Code 1996; and
- the Trade Practices Act 1974.

This booklet is designed as an easy guide to assist with your advertising by helping you to avoid problems.

As an advertiser you need to be aware that you are ultimately responsible for any representations you make. But it's not just you! Advertising agents and other businesses involved in publishing or broadcasting advertisements also have a responsibility to ensure advertisements prepared or aired on behalf of their clients don't contravene the law.

Breaches of the law could be expensive for your business, not just in fines or damages, but also in loss of goodwill. The Department of Consumer and Employment Protection is committed to helping dealers meet their legal obligations by providing specialist knowledge and information. Prosecution is, however, used where businesses are clearly not complying with the law.



Who should read this guide?

This guide is principally for motor vehicle dealers, but it has obvious applications for all sales staff and those responsible for preparing advertisements.

The Department has several objectives in publishing this guide. Firstly, it will contribute to ensuring the marketplace is both fair and competitive. If dealers do the right thing WA consumers can make informed decisions about purchasing motor vehicles.

The guide will also assist advertising agents and businesses involved in publishing and broadcasting advertisements on behalf of dealers.

The Guide is just that, 'a guide'- if a dispute arises over advertising it is possible the matter may have to be resolved in court, where any case depends upon the relevant facts.

The information below should help prevent that situation from ever arising!

The key principles of fair advertising

So, what is a fair ad?

In general terms you need to take care that your promotion and marketing are not likely to mislead or deceive people.

You should start by asking yourself two fairly straight-forward questions: 'Is it the truth?' and 'Does the ad convey a truthful impression overall?'

The booklet deals with these key questions under each of the following broad categories:

- Misleading or deceptive conduct;
- False or misleading representations;
- Misleading sales techniques; and
- Finance and credit.

1. Misleading or Deceptive Conduct

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may be misleading even
though it fails to deceive
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1. Misleading or Deceptive Conduct

Fair trading legislation includes an overriding general prohibition in regard to misleading or deceptive conduct. But what do 'misleading' and 'deceptive' mean? The Courts have given us the following definitions:

deceive:

to cause to believe what is false;

to mislead as to a matter of fact;

to lead into error to impose upon, delude, take in.

mislead:

to lead astray in action or conduct;

to lead into error; to cause to err.

The Court has also adopted the following as a test to what is misleading 'the advertiser must be assumed to know that the readers will include both the shrewd and the ingenuous, the educated and the uneducated and the experienced and inexperienced in commercial transactions.

He is not entitled to assume that the reader will be able to supply for himself or (often) herself omitted facts or to resolve ambiguities.

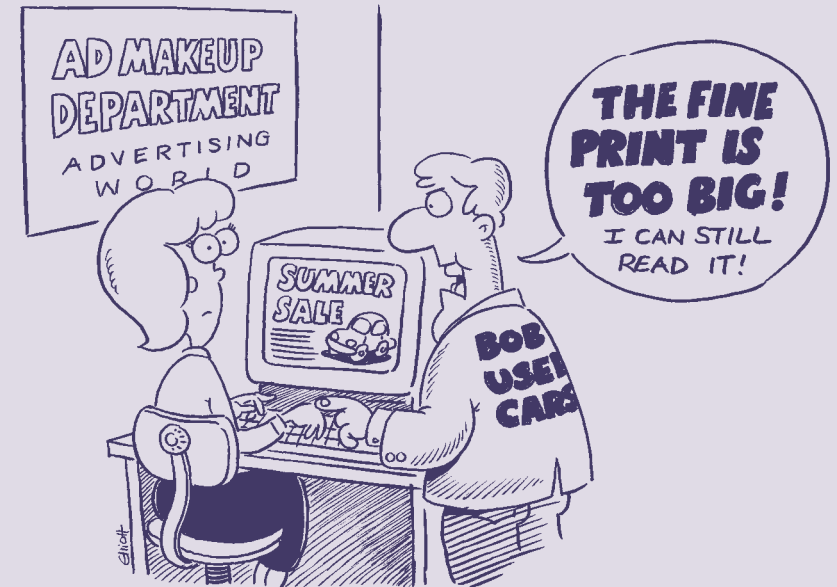
An advertisement may be misleading even though it fails to deceive more wary readers.¹

'Fine Print' and Other Qualifications

The 'fine print,' or other qualifications in advertisements, can be cause for concern if they are difficult to interpret or understand.

The Department believes that when this type of information is included, it should be presented in a manner which is clear, prominent and easy to read or understand.

You can use 'fine print' or other qualifications in advertisements if it is a statement which will not alter the overall



impression of the advertisement.

An example would be when you are complying with regulations, eg. dealer licence number.

As a guide, in printed advertisements, the Department suggests that when using small print in this manner, the published print size should be no smaller than 8 point print.

However, it is the overall impression created by the advertisement which is most important. Fine print or other qualifications will not necessarily correct a misleading impression created by other, more prominent elements of an advertisement.

The Courts have said that the size of the print is just as important as the description itself in the qualifying words of an advertisement.

As a guide, in printed advertisements, the Department suggests that when using small print in this manner, the published print size should be no smaller than 8 point print.

¹ CRW Pty Ltd v Sneddon (1972) AR 17. Adopted in World Series Cricket Pty Ltd v Parish (1977) 2 TPC 303.



Non-disclosure

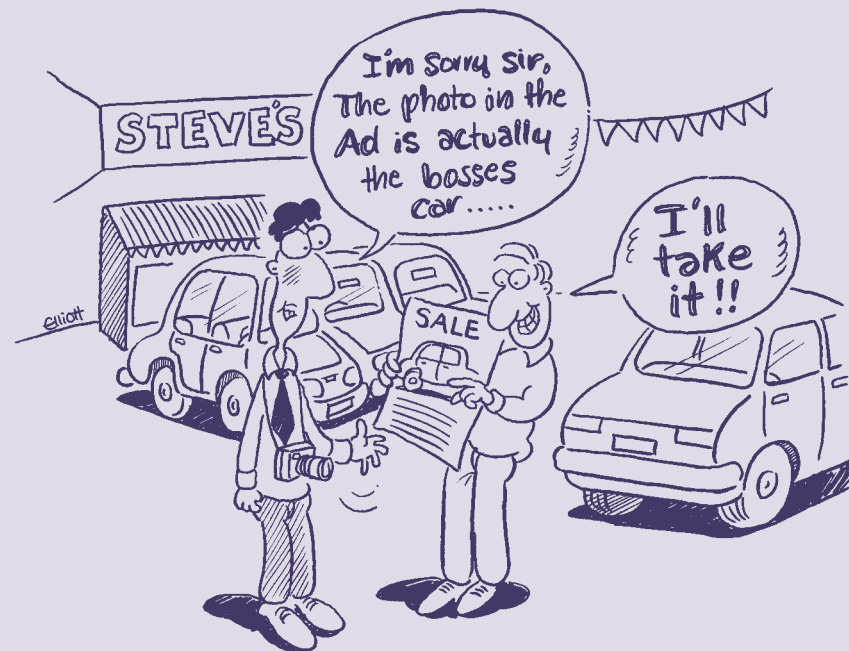
What is left unsaid in an advertisement can also give a misleading impression. For instance, an advertisement which states 'air conditioning, power steering' but fails to inform the reader that these are at extra cost to the stated price or that they do not operate, would clearly be misleading.

Industry Terms

Many consumers are ignorant of trade terms such as 'balloon payment,' 'residual,' 'minimum buy back' or 'TAP'

When these terms are used in advertisements the consumer should fully understand that particular condition of the purchase. A good example is where ownership of the vehicle depends on the purchaser making a substantial final payment.

If a final payment is required to obtain ownership, it should be referred to as such, and not as a 'residual,' which is a term more appropriate to lease transactions.



Using Pictures

Pictures or vision of a vehicle should match the model that is being offered for sale, including any visible extras such as wide tyres, mag wheels, special paint effects or roof-racks. Qualifications such as 'pictures for illustration purposes only,' may not absolve a dealer or agent from the responsibility of ensuring that a photograph or vision of a vehicle

accurately represents the one being advertised for sale. It is not acceptable to advertise a base model price vehicle by showing the top of the range model.

Neither should the current model of a particular type of car be used, if the vehicle for sale is an earlier model and there are differences in features (eg. shape, headlights, grill).

Duration of Advertised Offer

If you do not specify a period in an advertisement for which the offer applies, it will depend on the wording and the overall context of the advertisement as to what would be considered a 'reasonable period.'

The medium in which the advertisement appears is also taken into account.

For instance, if no duration is specified, a small 'strip ad' would be considered to have a shorter publication duration than a full page advertisement. Similarly, a daily newspaper has a shorter duration than a weekly publication.

To avoid confusion the Department suggests that you specify the time period for any special offers and ensure that all sales staff are aware of the promotion. Make sure that any forms or signage on vehicles are changed to reflect a special price or offer.

Making Comparisons

Care needs to be taken when making comparisons between vehicles. It is important to ensure that any comparisons made, are between 'like to like' vehicles. For example, comparing prices and models or the performance

of one vehicle to another, could be misleading if the advertisement compares a top of the range model vehicle with a base model which is clearly not in the same class.

The same care should be taken when using the results of tests or surveys to make claims about a vehicle or when using such data to compare one vehicle to another.

Whatever the situation, you must be able to substantiate any claims which are made in this form of advertising.

2. False or Misleading Representations

2. False or Misleading Representations

An advertisement is misleading if dealer delivery, stamp duty or licence registration fees have not been included in the advertisement

Price Advertising

Price is probably the most important influence in a consumer's purchasing decision. The Fair Trading Act prohibits false or misleading statements about the price of goods or services. The price stated in the advertisement must be the price at which a consumer can obtain the goods for cash.

Where a price reduction for a new vehicle is stated as '\$2000 off,' the amount of this reduction should be calculated from the normal selling price of the vehicle by that dealer.

To claim there is a saving from a recommended retail price, when the dealer's normal selling price is much lower, is misleading. 'Sale' or 'discounted prices' must be genuine.

Where it is claimed that prices have been reduced you should be able to substantiate that the goods have been offered previously for a reasonable time at the higher price.

You should retain documentary evidence to substantiate any claimed savings (eg. evidence of previous selling prices).

When advertising '\$3000 worth of free extras' the cost must not be included in the selling price. You must be able to show that the extras are 'free.'

Advertisements for 'Liquidation Sales' should clarify whether there is an imminent business closure or merely a mass stock clearance. Use the proper description and say what you mean.

New Vehicles (Dealer delivery costs)

The cash price of a new vehicle does not have to be stated in an advertisement. If it is stated however, it is necessary for individual dealers to include their 'dealer delivery costs' prominently in the advertisement.

A manufacturer's advertisement does not have to include the dealer delivery charge.

The Department understands this may sometimes cause confusion. But keep in mind that while it is the dealer who passes the dealer delivery cost on to the purchaser, it is only dealer advertisements that must include the actual cost.

If, however, a manufacturer advertises on behalf of one dealer only and states the cash price, then the cost of that dealer's delivery charge must be included in the cash price.

Government Charges

It is acceptable for dealers and manufacturers to state that Government levies such as 'licence and stamp duty' are extra to the price, provided that it is not an all-inclusive offer (eg. 'drive-away no more to pay') and it is clearly stated in the advertisement.

Cab Chassis

Similarly, if a dealer advertisement for a truck or ute shows a tray (or similar) fitted to the chassis, then the cost of the tray must be included in the cash price of the vehicle. If a photo or vision shows the cab and chassis only, the advertisement should clearly state that the cost of a tray is extra.

Manufacturer advertisements depicting a tray (or similar) can include a statement advising that the tray is extra. Again, this should be clearly stated.

All similar forms of advertising should follow this same principle.

'Drive Away No More To Pay'

The statement 'drive away no more to pay' creates the impression that a person who buys a vehicle will have to pay no more than the cash price stated to acquire ownership.

An advertisement is misleading if dealer delivery, stamp duty or licence registration fees have not been included in the advertisement.

If you use the terms such as 'drive away' or 'drive away price' the cash price must include the dealer delivery and licence fees.

Any charge over and above the drive away price (ie. stamp duty) requires a clarifying statement in the advertisement.

This qualification should feature as prominently as other elements which create the overall general impression of the drive away price in the advertisement.

Factory Cash Back Offers

These are rebate payments made by the manufacturer, to the purchaser, after the sale of a vehicle. Dealers should not advertise a vehicle which incorporates the factory cash back amount in the cash price. This is misleading as it falsely lowers the cash price of the vehicle.

Where a vehicle is subject to a factory cash back offer the advertisement should clearly identify that the purchaser will receive a separate rebate after buying the vehicle.

Year of manufacture / model

The year of manufacture means just that - it is the year the vehicle was built. It would be considered misleading to refer to a vehicle as a '1998 model' if it was manufactured in 1997 or earlier. It is better to identify it as a 'current model built in 1997.'

This is particularly relevant to secondhand vehicles advertised for sale. Where the year of manufacture can't be ascertained then it is not appropriate to simply state the date shown on the Australian compliance plate as the year of manufacture. There may be a significant difference between these dates.

It is better to declare the information unknown or clearly indicate that the year stated is that of the vehicle meeting Australian compliance.

Demonstration Vehicles

'Demo' vehicles should be clearly identified in advertisements. As demonstration vehicles have been licensed, the Department suggests that the registration number, year of manufacture, cash price and dealer's details should be stated.

Care should be taken when stating amounts that are claimed as being savings off the new car price.

A good way of wording such a claim would be '\$3000 cheaper than new car price.' Keep in mind that any claimed savings must be able to be substantiated.

Used Vehicles

The Motor Vehicle Dealers Act requires that dealers' advertisements for secondhand vehicles include:

- the cash price ;
- the year of manufacture;
- the registration number;
- the address of the premises from which it is being offered for sale, and
- the name of the dealer and licence number.

With unlicensed vehicles, the Department accepts the use of the stock number in place of the registration number.

3. Misleading Sales Techniques

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It is an offence to offer gifts, prizes or other free items in a promotion if you do not intend to provide them as offered.

Offering Gifts or Prizes

It is an offence to offer gifts, prizes or other free items in a promotion if you do not intend to provide them as offered. If you advertise in this way, you must at the time of advertising, have a reasonable expectation of being able to provide the items as advertised. This includes gifts or prizes being supplied by another party.

Once again, it's important to state any qualifications carefully and prominently in an advertisement to avoid confusion.

Payment without Supply

Accepting payment for goods or services when you are unable to supply them or intend to supply goods or services materially different from the original order is misleading and deceptive conduct.

Quantity and Availability (Bait Advertising)

New Vehicles

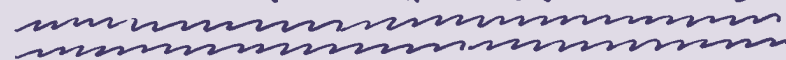
Essentially, if you offer a particular type of vehicle for sale, then it should be available. The Fair Trading Act requires that "reasonable quantities" of stock be available for a 'reasonable period' having regard to the nature of the market and the nature of the advertisement (see also 'Duration of Advertised Offer' page 10).

Whilst a statement like 'while stocks last' may seem innocent enough, it may be considered 'bait advertising' if you don't have sufficient stocks of an advertised vehicle available to cater for the likely demand your advertising will bring. Once again, it's important to state any qualifications carefully and prominently in an advertisement to avoid confusion.

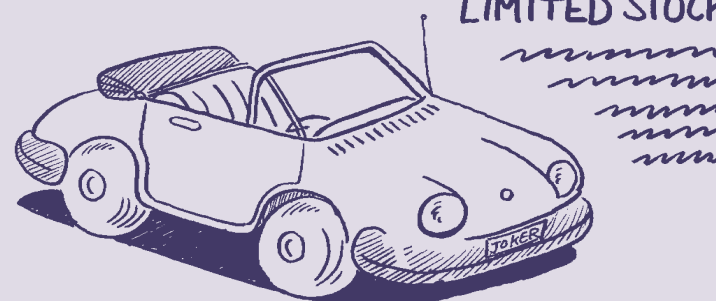
UNBELIEVABLE OFFER FROM STEVE'S USED CARS...

FREE PORSCHE

WITH EVERY VOLKSWAGEN PURCHASED



LIMITED STOCK



LIMITED STOCK MEANING WE'VE GOT NO PORSCHE'S TO GIVE AWAY, AND EVEN IF WE DID, THE PRICE OF OUR VOLKSWAGENS IS TWICE WHAT A PORSCHE IS WORTH. NO RESPONSIBILITY TAKEN.

For example, if stocks are limited, this should be clearly stated in the advertisement and if necessary, a statement clarifying limitations faced by a customer. Trying to determine what would be a reasonable amount of stock for a campaign is very difficult particularly if stock is required to be purchased in advance.

A good starting point is to think about stock delivery timetables at the same time you're planning a campaign. Don't ignore the fact that intense advertising campaigns - particularly those on television - are likely to generate higher levels of customer interest. Think about previous campaigns when determining likely demand.



It's not reasonable to state something like 'limited stocks' in a statewide press campaign, knowing that there is only a small quantity of vehicles available which would be unlikely to satisfy the nature of the campaign, and the size of the market it is aimed at. It is better and clearer to state the actual number of vehicles available and the location where appropriate.

Used Vehicles

The same principles apply to used vehicles. You should not advertise a used vehicle for sale unless you have acquired the vehicle into dealership stock.

It would be considered bait advertising if you advertise a vehicle for sale which you have not acquired, or have previously sold, to attract customers with the intention of having them look at other stock in your yard.

4. Finance and Credit

4. Finance and Credit

It is an offence to make a false or misleading representation about the credit contract or anything relating to it.

Fair Trading Act

The Fair Trading Act requires that information about repayments be stated where any portion of the price of a good, such as a deposit, weekly or monthly instalment is advertised. This ensures that purchasers are fully aware of all the costs that will apply for them to acquire ownership under finance.

Advertisements must clearly state:

- the cash price of the vehicle;
- any deposit payable;
- the amount of each instalment;
- when it is payable (eg. monthly); and
- the total period over which instalments are payable.

Remember, if this information is going to be in the fine print or a qualifying statement, it should be prominent, easy to read and understand having regard to the overall context of the advertisement.

If an advertisement includes an example of a finance offer, then the fees and charges for the finance arrangements must be included in the calculation.

Consumer Credit Code

The Consumer Credit Code requires that if an advertisement states the amount of an instalment for goods being sold on finance, then the advertisement must also show the interest rate. If credit fees and charges are payable the advertisement must disclose that fact by either stating that fees and charges are payable OR specify the amount of fees and charges.

If an advertisement includes an example of a finance offer, then the fees and charges for the finance arrangements must be included in the calculation.

The figure quoted of \$xxx per week/month must be available to any consumer who responds to those terms offered, and must represent the total amount payable per week/month on the terms offered.

It is an offence to make a false or misleading representation about the credit contract or anything relating to it. If a borrower loses any money as a result of false or misleading representation, you may be liable to refund this money.

Says here Harold "NO APPLICATION REFUSED".
Think maybe I'll get myself a nice little Beamer,
or maybe even a Merc. What about you?



Finance Offers

Make sure the fine print, or a qualifying statement, can be read and understood. Offers such as 'instant finance,' 'finance available,' 'all applications accepted' and 'no application refused,' can be misleading if the offer is only available 'to approved purchasers'. The fact that it is only available to approved purchasers should be clearly stated. It should be unabbreviated, prominent and easy to read or understand having regard to the overall context of the advertisement.

Guaranteed Buy Back

Guaranteed buy back has become an increasingly popular way to advertise vehicles.

The attention of readers, viewers or listeners is immediately caught because of the prospect of being able to 'own' a vehicle for several years, without having to pay the full amount and to be guaranteed a minimum buy back price.

This type of advertising highlights the importance of fully disclosing information so the advertisement creates an overall truthful impression.

Because guaranteed buy back requires credit or finance to be offered, it is necessary to follow the requirements of the Consumer Credit Code and Fair Trading Act when advertising.

If there is an option for a person to purchase the vehicle then the advertisement (not the fine print or qualification) should clearly state that there is a final payment and the amount. Where a monthly or weekly payment is a feature of a printed or visual advertisement, any different payment (eg. final payment) should also be shown in the same size print. Radio and television advertisements should clearly identify the same information.

Leasing

Genuine lease arrangements do not pass the ownership of a vehicle to the lessor.

If a lease advertisement states periodic instalments or deposit payable the requirements of the Fair Trading Act must be followed.

The Department is aware of advertisements which purport to be for lease arrangements, but will in fact pass ownership to the consumer (lessor).

These instances are considered as an offer of credit or finance, and as such, must follow the requirements of both the Consumer Credit Code and Fair Trading Act.

Appendix 1

Appendix 1 - Quick Reference Checklists

Used Vehicle Checklist

New Vehicle Checklist

Appendix 1

USED VEHICLE CHECKLIST

Note: This checklist identifies some of the more common advertising scenarios.

Remember, depending on the type of advertising you are running, you may need to combine some checklist items to ensure all requirements are met. If you are unsure, please contact the Department.

Advertisement for used vehicle under finance

- Business name, dealer licence number, premises address
- Registration number (stock number if unlicensed)
- Year of manufacture
- Cash price
- Photo (if any) is the same – including features and accessories – as the car for sale
- Deposit amount
- Amount of each instalment and when payable
- Total period of instalments
- Total amount payable (includes amount financed, credit charges and other fees and charges)
- Annual percentage rate
- Statement that “fees and charges may apply”

Appendix 1

NEW VEHICLE CHECKLIST

Note: unless specified, the checklist items apply the same to individual dealer as they do to manufacturer advertising.

Advertisement for new vehicle - no cash price stated

- Business name
- Dealer licence number and premises address
- Photo (if any) is the same – including features and accessories – as car for sale

Advertisement for new vehicle - cash price stated

- Cash price (individual dealer or manufacturer on behalf of an individual dealer) – dealer delivery included
- Cash price (manufacturer group advertisement) – no dealer delivery
- Statement that Government fees (stamp duty and licence) are extra
- Business name, dealer licence number, premises address
- Photo (if any) is the same – including features and accessories – as the car for sale

Advertisement for new vehicle picture with accessories - cash price stated

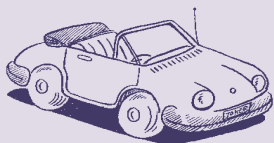
(eg: cab chassis with tray)

- Cash price – cost of accessories (eg: tray) and dealer delivery included
- Statement that Government fees (stamp duty and licence) are extra
- Business name, dealer licence number, premises address

Acknowledgement

This publication was published jointly by the Department of Consumer and Employment Protection and the Motor Trade Association of Western Australia (Inc).

The MTA is a member-driven organisation that exists to protect and promote the interests of its members. In its role as the voice of the retail motor industry, the MTA sets the example of good business ethics.



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Consumer Protection Advice Line 1300 30 40 54
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Wageline 1300 65 52 66
8.30am-5.00pm weekdays except Wednesday 9.00am-5.00pm

WorkSafe 9327 8777
8.00am-5.00pm weekdays

This booklet is available in alternative formats such as large type, computer disk and Braille. If you require the services of an interpreter contact the Translating and Interpreting Services (TIS) on 131 450 and ask for connection to Labour Relations 1300 304 054 or WorkSafe 9327 8777. It is also available on our website www.docep.wa.gov.au

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