

## Law as a Social Regulator of Advertisement and Advertising Activity in the Modern Russian Information Space

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Doi:10.5901/mjss.2015.v6n3s4p9

### Abstract

*The given article shows that law as a social regulator in the sphere of information relations becomes a new kind of information space regulation which carries new problems the solution of which depends on political and other purposes of the governmental authorities. The article lays stress on the statement that nowadays in the Russian Federation the democratic values are the priorities of constitutional state building. In the center of these values is a human, his rights and liberties, and the main social relations regulator are law and justice. A characteristic feature of the Russian advertisement is a contradiction between its evident and secret functions. It differs from foreign advertisement qualitatively, but it can also compete with it. At the same time the presence of fraudulent advertising which contains manipulation technologies causes the negative attitude towards it. Generally speaking, the influence of advertisement on the social activity of the population is controversial, because it not only stimulates the development of the economy and tertiary activity, but can also manipulate the public conscience and behavior. From this point of view the analysis of law as a social regulator of advertisement and advertising activity is of some interest for the given research.*

**Keywords:** law, social regulator, advertisement, advertising activity, information space.

### 1. Introduction

The modern information space becomes an organized social system which requires the higher degree of legal regulation and legal defense of the information relations. The legal regulation of such relations has an influence on the governmental authority effectiveness and the citizens' realization of constitutional rights and liberties.

Currently the increased role of law as a regulator and source of management decisions is connected with its influence on different processes, including informational and communicational, which nowadays is not adequately investigated by sociology. It can be connected with the fact that historically the legal nihilism prevailed in the public conscience, but the transforming public relations and increased demand for legal regulation set a problem of using this resource in a bigger volume.

The social-information space of modern Russia is characterized by a weak controllability, a great number of subjects and a variety of information impact processes. The advertisement and advertising activity are among them. The appearance of multimedia technologies at the end of the XXth century set an aim of investigating law as a social regulator of advertisement and a kind of information which is caused by the features if its character, meaning, content, form and methods of spread. "Advertisement should be, - says A.N.Tolkachyov, - socially correct in relation to any individual and legal entity (including consumers and competitors), and also comparable goods, e.g. advertisement shouldn't mock or discredit the way of life, traditions, social status and basic cultural values of society" (Toshchenko, 2007). The prospects of development and use of modern information technologies allow to make a conclusion that this field will cover a bigger segment in the conception of national security of the Russian Federation. The increasing interest to advertisement and advertising activity is connected with the demand for using an interdisciplinary approach which includes philosophical,

legal and social knowledge.

The legal regulation of advertisement and advertising activity presents a special procedure of its regulation, which shows a particular combination of judicial tools and methods that provide the favorable (or unfavorable) conditions of legal environment. The legal support in advertising activity includes a complex of social relations which are fixed by the judicial norms and provided by the total of judicial and organizational means which aim to define the social order of an object on the one hand and the legal principles, forms and methods, rights and duties of the subjects on the other hand.

Frequently at the present time we face a situation when it's difficult to distinguish a commercial advertisement from a political one, a political advertisement from social. It creates presuppositions of forming deformations during the realization of right for it. The modern advertisement more and more becomes an instrument of influence on the public conscience and also a means of manipulation. The existence of society under the conditions of the corrupted informational and communicational space and also the problem of escaping from these conditions are the subject of the given research. Its aim is connected with the regulation of two mutually exclusive processes, on the one hand they are the maintenance of freedom of speech, press, access, use and information, and on the other hand they are the exception of unfair and apocryphal advertisement as factors of deformations in the sphere of advertisement and advertising activity.

The advertising market is one of the most dynamically developing markets in the whole world and it becomes a part of the Russian economical, political and informational space. Under such conditions the advertisement and the advertising activity need a perfection of the legal regulation which connects the entire complex of legal tools of its securing together. That is why the problem of creating of such legal environment which could provide the promotion of advertising production quality, its legitimacy; which could exclude unfair and improper advertisement which carries a risk for social instability, information security, economic interest, rights and liberties of man and citizen of the Russian Federation becomes very current.

## 2. Methodology

Building of a methodological construct of investigating the legal regulation of advertisement and advertising activity includes the analysis of social metaparadigms, which allow defining the system of principles, methods and ways of measuring the characteristics of the stated social institutions (Matuzov & Malko, 1996). As a system of socially approved rules, the methodological construct allows to compare the available paradigms, theories and scientific approaches towards the analyzable phenomena, which includes:

- using classical, neoclassical and postnonclassical metaparadigms of the sociological research, which contain the basis of theoretical sociology;
- investigation of theories and scientific approaches for defining factors of interaction between social institutions of advertisement, advertising activity and law statically and dynamically;
- clarification of structure of legal regulation of advertisement and advertising activity in the public relations system.

The methodological construct of investigating law as a social regulator of advertisement and advertising activity in Russian information space is based upon:

- the structural-functional approach, which allows to single out the elements of social interaction of institutions of law, advertisement and advertising activity as complex social systems;
- the activity approach, which allows to analyze the correlation of institutions of law and advertisement in the information space through legal regulation of advertising activity;
- the complex and system-diagnostic approaches as the traditional fields of methodology of scientific knowledge.

During the solving of a given problem of analyzing law as a social regulator of advertisement and advertising activity in Russian information space such methods as analysis, synthesis, induction, deduction, analogy, formalization and comparative and legal were used.

The presence of law as a social regulator in the sphere of advertisement and advertising activity is a necessary condition of development of social, economical, cultural, informational and other aspects of vital activity. The works of a number of lawyers, sociologists, political scientists and psychologists are devoted to this question.

M. Veber investigated law from the point of view of its subjective sense in contrast to legal, which is based on its objectivity (Alekseev & Arkhipov, 2005). From the point of view of P. Bourdieu, law fulfils its function when it takes part in an objectivization of the social behavior, going from the external structures to the internal regulator (Wolves, 2010). E. Giddens treats law as a subject which has a particular practical sense in the function of asocial interaction algorithm (Golovleva, 2003).

A major contribution to the development of the investigation methodology of law as a social regulator made S.S. Alexeyev, who considered that the value of law is in its personification of social freedom and people's activity on the ground of well-ordered relations (Alekseev, 2011); Matuzov N.N. and Malko A.V., who defined the concept and specificity of legal order and legal regulation (Mishul, Khachaturian & Roslavlev, 2009).

In E.L. Golovlyova's works the concept, functions and specificity of advertisement are stated (Zhukov, 2013); A.N. Mudrov presented his view of these questions in his works (Pankratov, Bazhenov, Seregina & Sharuhin, 2001). Advertisement as a repeater of generally accepted values in the system of sociological knowledge is described in the L.N. Fedotova's research (Fedotov, 2007). Mishul G.M., Khachaturyan K.E., Roslavlyova M.V. study the history of regulation and experience of legal evaluation of advertisement and advertising activity and offer the ways of the advertising law perfection (Morozov, 2006). The questions of the legal regulation peculiarities are also reflected in the works of A.A. Morozov (Mudrov, 2005), S.G. Bogatskaya (Bourdieu, 2007). Moreover, we used our previous researches within a framework of the stated problem (Lubskoe, 2005).

In general, a particular theoretical basis for the further investigation of advertising activity regulation in the Russian information space is forming within a framework of legal regulation of advertising activity in Russia.

### 3. Results

The modern legal informational policy pushes its way in the form of historical necessity, including both progressive and regressive features. Social and political reconstruction, formation of market-based economy objectively caused a demand for essential changing of information relations between an individual, society and state, because information can be studied as an economical category which has its own value. "A concept of "informational capital" appeared for defining the social information wealth and is used in order to reflect the costs and profits, connected with production, storage, processing, transferring and receiving the informational resources as reserves and sources of information", fairly notes E.A. Zvereva (Karyagin, 2009).

Gradually in Russia began a process of growing of commodity and services market and consequently the advertisement became much more popular than before, and the appearance of new information technologies allowed the advertiser to evade the established prohibitions and restrictions. In this process "the advertisement actualizes its pragmatic goals, functioning in mass media under its laws: it gives information about the outside world, repeats values shared by the society, makes the landmarks of a sociopolitical action in such forms and signs of a cultural-sign paradigm which are usual for the given society" (Fedotov, 2007), which influences the formation of the information space.

Nowadays the essence of advertisement lies in the achievement of economical interest of producers, and its content lies in commercial propaganda of goods. On the one hand it stimulates the demand for new improved necessary goods and on the other hand it's a communicative tool between a commodity producer and consumers, which creates an advertising business, a qualitatively new form of legal relations. For its consumers advertisement creates the conditions for a free choice and allows to control the system of preferences, which is necessary under the conditions of saturation the market with goods and services, and also it "forms the demand for them, taking into account social and demographical features of separate groups of consumers; forming of the rational people's needs requires the use of advertisement" (Osipov & Moskvichev, 2008).

Advertisement can become manipulative because it has an influence on the consumer's subconsciousness making him make an unconscious choice. Such advertisement is not prohibited by law, but manipulations similar to this deform the consumer's inner world, influence the forming of stereotypes at the level of subconsciousness, structures the intentions, desires, etc. in the interest of the advertisement producers. Its content can provoke to do illegal actions if illusion and reality come into collision. In this case advertisement as a means of information extremism becomes as destructive as the extremist groups.

A lot of spheres of human activity which require the legal regulation almost always are connected with risks (Bogatskaya, 2007). Today there are no effective methods of evaluation risk in the advertising activity under the conditions of diversification of the national interests, which practically causes the unpredictable results under the conditions of values and priorities competition, and also leads to the growth of individualism, detachment of social strata which study their own interests. Risks in social activity should take into consideration the social heterogeneity of interests and possible environmental resistance in case risks are unreasonable and illegal. Therein lies the art of consensus-building between different groups of interests, which are determined by a level of development of the law system and legislation which take into consideration the conceptual approaches towards reasonable and unreasonable risks in advertisement and advertising activity.

That is why the so called "imposed" information should be under control of state and legal institutions, because it

influences the forming of values and ideals, legal conscience and culture, positive or negative image of society, etc., which in its turn has an influence on public relations. That is exactly why "the advertisement is denied if an essential part of information about the advertised product, about the purchase or use conditions is missed in it, if at that the sense of information is distorted and the advertisement consumers are misled," as it is stated in item 7 of Art. 5 of the Federal law of 13, March 2006 №38 FL "Advertising" (Federal Act of 13 March 2006 № 38-FZ "On Advertising". Russian newspaper. 15 March 2006. № 51).

Within a framework of the state information legal policy the advertising activity is a mass medium, which influences the economical part of a state interest, forming of moral and aesthetical ideals, social partnership, respect for its state history, for society consolidation, etc. In the absence of doctrinal solution of a number of basic problems it is necessary to form a set of legal measures which will provide a system regulation of the advertising market in all its aspects.

The legal regulation of advertisement and advertising activity is a complex of public relations and within its framework forms a combination of legal, political and social mechanisms which regulate the multiplicity of its condition. It includes a system of state legal regulation and self-control in a form of dialog between the state institutions and self-controlling organizations.

The balance of contradictory interests between the subjects of advertising activity is achieved by a corresponding legal regulation, which should be focused on the protection against unfair competition and business reputation of these legal relations' participants. Law as a social regulator of advertisement and advertising activity is determined by the presence of restrictive measures, allowable level of its subjects' activity and the limit of their legal independence.

Advertisement as a kind of information can be limited only by state, if the necessity of such intervention is proved. The system of national information security calls upon the promotion of the quality of advertising production, its legitimacy, which excludes unfair and improper advertisement which carries a threat for social stability, information security, economic interest, rights and liberties citizens. The conception of rights and liberties is constantly developing because of naturally arising new generations of human rights, and particularly in the sphere of advertisement and advertising activity. Setting up a correspondence between the Russian legal system and the international standards in the sphere of human rights and liberties becomes an observance guarantee.

The inefficient legal regulation of advertisement and advertising activity leads to infringement of rights and legal interests of its consumers, difficulties with determination of guilty people and their bringing to account under the conditions of absence the unified law enforcement practice. "After a long development and legal registration advertisement turned into a bright and multifaceted phenomenon, it became part and parcel of life of the society; it got into all spheres. That is why the society sets a task to determine the legal framework of this institution's functioning, to form a mechanism of advertisement control" (Lubskoe, 2005).

The presence of public interest in advertizing doesn't always allow to divide it into commercial and social, that's why the substitution of its kinds may take place. It leads to the violation of the current legislation, but doesn't result in legal responsibility. Legal determination and clear differentiation of the advertisement types allow to avoid negative consequences and misuses. Within this framework it is necessary to improve the legal regulation of advertisement and advertising activity, revelation of gaps and contradictions in the current legal system, development of theoretical recommendations to eliminate them.

#### 4. Discussion

Sociological analysis of law allows to determine its most important social function, which in everyday life manifests as a regulator of the specific behavior act. Law regulates the public relations, influences the society as a whole. The ultimate result of such influence creates a social order in it; the basis of which are law and order. "Stable law and order mean that changes which take place in social sphere and legal system on the one hand and the individuals' behavior on the other hand do not break the given type of relationships between the individuals and social sphere", as G.V. Osipov and L.N. Moskvichyov state. That is why lawful behavior of individuals and their groups is an important factor of a social order appearance, which correspond the legal instructions and the sense of laws.

As Z.T. Toshchenko considers, in a sociological aspect "a process of legal norms adoption, understanding, acceptance or rejection of them, attempt to follow or confront them, being guided by them or to avoid them while solving the problems of life rather than the process of creation, approbation and confirmation of them" is the sense of legal regulation. At that the law will act in case it's a moral norm and an inner regulator of a human behavior.

People's social activity and freedom are interconnected and regulated by law. If they are not regulated by law and justice, they may develop into arbitrariness. As N.I. Kareyev notes, the promotion of sociology in legal sphere was difficult and contradictory, because the dogmata of the legal techniques didn't allow the scientists and experts understand the

social nature of the accepted laws. The value of law in such case is directly determined by its social nature, it depends on a particular stage of social development, civilization, and also on a character of the government.

Law as a social regulator is an instrumental value, because it provides the functioning of other social institutions having the compulsion resource (Giddens, 1992). The value of law lies in personification of social freedom and people's activity on the basis of well-ordered relations. At the heart of these relations lie justice and necessity to coordinate the will and interests of different population strata and social groups.

Law as a social regulator of advertisement and advertising activity allows to choose the most efficient combination of legal measures to achieve the objectives and goals and also can create particular conditions of their fulfillment. Nowadays in Russia there are a legislative basis and executive bodies, which control the execution of the advertisement legislation. "The essence of a state regulation of advertisement , - as A.N. Mudrov notes, - can be determined in the following way: the government intervention into the advertising activity should be minimal, excluding the direct prohibition of separate types of tobacco and alcohol advertisement and the advertisement dissemination restriction which are focused on children and with their participation" (Pankratov, Bazhenov, Seregina & Sharuhin, 2001). It should be noted that strengthening of a state control of information-communicative activity is connected not only with the dynamics of public relations, but also with the appearance of new multimedia devices for information exchanging.

The author considers that the legal regulation of advertisement and advertising activity allows to provide a complex influence on its subjective and objective relations via regulative, conservatory, process-procedure measures, which combine together permissions and obligations, restrictions and prohibitions in order to achieve a desirable social effect. It's achieved by a normative legal base and is approved by the state, e.g. it has a power of general effect.

The structure of a legal regulation of advertising activity includes:

- the goals, which are aimed at the fulfillment of legal rights and interests of the advertising activity subjects;
- the codification of rights and obligations between the subjects of advertising activity;
- the system of advertising activity regulatory body, the order of their forming, functioning and interaction;
- the authorities of self-regulating public organizations on the sphere of legal regulation of advertisement and advertising activity;
- the normative regulation, supervision and control of advertising activity, which forms a basis of the legal support;
- the regulation of different kinds of activity in the sphere of advertisement and preventive and protection punishments.

Thus, the legal regulation of advertisement and advertising activity includes not only the system of a state legal regulation, but also the order of self-regulation which has a character of a dialog between the state institutions and self-regulating organizations under the condition of a high level of the legal culture of all the advertising market participants. Hence, the advertising activity has a system character and can undergo the analysis through its subjects and objects interaction, which function as a whole when the competence, forms and methods of interaction are clearly arranged.

In order to protect their activity from unfair competition the businessmen have to accept the necessity of a state intervention in case the legal, ethical and other norms, which regulate advertisement and advertising activity, are broken. It's necessary to agree with the S.S. Alexeyeva's opinion, that "the legal responsibility for breaching of law about advertisement is one of means of legal regulation and a kind of legal responsibility and has mutual for this legal phenomenon features..., according to which it is an established in a specific procedural order obligation of a subject who committed a tort to suffer the adequate deprivation of property or organizational character, stated by a sanction of the legal norm" (Andreev, 2011). That is why Federal Antimonopoly Service of the Russian Federation as an authorized body of the executive power exercises the functions of accepting regulatory acts, controlling and supervising the maintenance of law in the sphere of competition in commodity, job and services market, and also advertisement in the part established by law of antimonopoly body.

The growth of industrial production, appearance of new commodities and services promotes the development of advertisement and advertising business, which on the one hand increases its demand, and on the other hand the necessity of its legal regulation. In 2006 the enactment of laws about advertisement in Russia has not only a positive sense, but also several gaps, which lead to the uneven development of the whole legal system providing the advertisement regulation. "It goes without saying, that the law is static and the developing public relations are dynamic; the law is always doomed to lags and inaccurate, incomplete regulation of the sphere it was designed" (Morozov, 2006). The author believes that the given contradiction can be graded through reception by the advertisement legislation of norms of social regulation, including ethical, aesthetical, moral norms, axiological, cultural and other values, and also the experience of the international law. Hence, a complex investigation of the legal basis of advertisement both in Russia and abroad would allow to reveal the tendencies of development of the legal support of advertisement and advertising activity

in a system of national information security and also protection of rights of man and citizen.

In the author's view the criterion of succession in the legal support of advertising activity is a part of norms taken from the international law, which finds its place in the Russian legal system. The bigger this proportion is, the more evident is the succession. The observance of norms of the international law should be stated in the Russian law of advertisement, which defines it as a special kind of information focused on the consumer. At that the advertisement shouldn't be unfair or false; it shouldn't mislead or have inaccurate form.

"The problems of legal regulation of advertising activity are revealed and analyzed only in the scientific literature and the ways of solving them are offered very seldom. On the legislative level such questions are regulated rather weak, although the advertising relations are that kind of sphere which changes extremely fast and differently. And it demands as quick reaction of a lawmaker as possible" (Mudrov, 2005). The author believes that during the solving of this problem it's necessary to take into account the foreign experience, because it has a long history and would allow to adapt the Russian law and law enforcement practice to the demands of international law and global economy.

The history of international law in the sphere of advertisement and advertising activity, which is longer than the Russian one, "tends to unification of legal norms on the territories of different states, and for this reason the unified rules of advertisement regulation, functioning irrelative of states' boundaries, are developed" (Bourdieu, 2007). The global experience of defining law as a social regulator of advertisement and advertising activity shows that the majority of states tends to develop the unified legal norms and principles regulating advertisement, which should promote the improvement of its quality and perfection of mechanisms of controlling the law observance in this sphere. They not only accept the unified rules of advertisement regulation, but also establish mutual dispute resolution bodies, help each other in the preventive control and the enforcement of responsibility.

In countries with the developed market-driven economies the legal regulation of advertisement has a long history of development, combining legal regulation and self-regulation. "The aims of legal regulation of advertisement in developed countries are basically of preventive character, for this reason methods and measures of advertisement regulation are focused on the prevention of law infringement and conscious, voluntary observance of rules by the subjects of advertising market", notes Bogatskaya (Bourdieu, 2007). Unlike them the developing countries use this experience but taking into account their national, religious, economical and other features. For example, as E.L. Golovlyova states, "the strongest manifestation of Asian advertisement is not the continental, but its national uniqueness, based upon the cultural, historical and even philosophical traditions and principles. The most difficult problem to solve for the western advertisers is the barrier of language and moral-ethical variety of Asian countries" (Zhukov, 2013).

Rapid development of the Southern-Eastern region attracted the western advertisers, followed by the outstanding international network advertising groups, who had greatly influenced the development of national advertising markets in these countries. As a result, in this region a new style of advertisement, advertising activity and their legal support, combining the benefits of European advertisement and national cultural traditions of the East was developed. The dual character of its legal regulation includes the modern legal technique and the traditionalism of mentality of the eastern society, that is unfamiliar to the majority of European countries, in which the mutual and special demands to advertisement are fixed, the rights and obligations of the subjects of advertisement business are determined, the mechanisms of legal observance control and bringing the guilty people to legal responsibility work.

As S.G. Bogatskaya considers, "the practice of adjudgement by the European Court of Human Rights (the Strasbourg Court) proved that advertisement falls under the action of assurance of freedom of expression, but it has lower level of protection in comparison with noncommercial opinions. The advertisement restrictions, as the Strasbourg Court states, should be prescribed by law, correspond the legal goals and be necessary in a democratic society" (Bourdieu, 2007). The point is that the right of information is one of the guaranteed rights of man and citizen, accepted by national legal systems and international law, that is why advertisement as a type of information can be restricted only by the state in case the necessity of its intervention is proved.

The legal succession in the sphere of advertisement is manifested in the process of transferring from one legal system to another. This process takes place independently of particular economical, political, social and other conditions, which exist in different counties of the world. Nowadays in Russia the democratic values are the priorities of building a constitutional state. In the centre of these values stand a man, his rights and liberties, and the leading regulator of social relations are law and justice. It means the establishment of correlation between legal support of advertisement and advertising activity and values of a social state. In this case advertisement will satisfy the expectations of society and successfully implement its economical, social, communicative and marketing functions, orientations toward humaneness and legitimacy as the incontestable priorities of the democratic society.

## 5. Conclusions

In the basis of a state information policy should be taken rights and liberties of man and citizen, and also the national interest including the absence of censorship, proclamation of freedom of speech, pluralism in ideology, the right of mass media to advertise different political, cultural, national, ethno-confessional values and orientations, even those which do not coincide with the state policy and do not infringe the laws of the Russian Federation. The legal information policy lies in taking into account the interests and needs of both separate individuals and groups and also the whole society. Otherwise the establishment of total control in the sphere of information can lead to stagnation of public relations, acts of civil disobedience, extremism, terrorism, e.g. it can lead to all that carries a risk for the constitutional order of the Russian Federation.

Information and information technologies, which influence the mass consciousness, gradually become the core factors of the whole system development. That is why the advertising information, distributed via the mass media channels, can acquire a controllable or uncontrollable character, and the commercial interest of advertisers allows them to shut their eyes to the negative social consequences of such activity. The advertising market as one of the most dynamically developing markets all over the world is a part of society information system. Under such conditions advertisement and advertising activity are provided with the presence of a special legal regulation, which connects the whole complex of legal measures in accordance with the means of legal regulation, types and methods.

Law as a social regulator of advertisement and advertising activity shows a combination of complex of regulatory acts and measures, including permissions, prohibitions, enforcements, legal restrictions, stimulus, resolving procedure of regulations, etc. The degree of regulation by law is determined by the presence of restrictive measures, the allowable level of activity of advertisement and advertising activity subjects, the limits of their legal independence. Hence, it's possible to make a conclusion that the legal regulation of advertisement and advertising activity in Russia is established by the combination of legal acts, resolutions and social norms, which are included in the Code of professional activity in the sphere of marketing communications. Law as a type of social regulation gives the participants of the advertising relations the mutual rights, prohibitions, permissions, allowances, etc.

The global experience shows that the majority of states tends to develop the unified legal norms and principles which would regulate advertisement. They also should promote the improvement of its quality and perfection of mechanisms of controlling the law observance in this sphere. The majority of states not only accepts the unified rules of advertisement regulation, but also establishes mutual dispute resolution bodies, help each other in the preventive control and the enforcement of responsibility.

Law as a social regulator of advertisement and advertising activity should:

- combine the interests of citizens and state, cultural and historical traditions, norms of law and morality;
- take into account the communicative function of advertisement, the interests of all subjects of advertising market;
- promote the development of business contacts of experts in the sphere of advertisement, marketing and public relations both at national and international levels;
- initiate the development of new advertising technologies and corresponding legal support;
- establish the rules of gathering and dissemination of information about law infringement at advertising market;
- provide the protection of professional rights and interests of advertisers and creation a civilized advertising market;
- promote the advancement of norms of business intercourse into the sphere of advertisement;
- lobby the participation of subjects of advertising business in the construction and discussion of bills of its regulation;
- take into account the positive experience of social advertisement of protection of human rights and liberties.

Consequently, a legal environment can be created, which will promote of the quality of advertising production, its legitimacy, which excludes unfair and improper advertisement which carries a threat for social stability, information security, economic interest, rights and liberties citizens.

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