

**Trademark Law Office No.:** 114

**Serial Number:** 88706851

**Mark:** REMEDY

**TO:** **David A. Brookshire**, Examining Attorney  
**Law Office 114**

**FROM:** **Michael A. Penn**, Attorney for Applicant  
**APPLICANT: Remedy Films, LLC**  
**MARK: REMEDY**  
**Serial Number: 88706851**

**RE:** **Response to OFFICE ACTION (Official Letter) issued June 20, 2020**

**DATE:** **December 4, 2020**

Remedy Films, LLC, the Applicant herein (hereinafter referred to as “Applicant” or “RF”) is in receipt of the Office Action – Suspension Notice issued by the Examining Attorney on the trademark application referenced above. The Examining Attorney indicated in the Office Action that Applicant has satisfied the requirements of submitting an acceptable specimen for the services in class 35 as well as amending the identification of services. Examining Attorney has also maintained the likelihood of confusion refusal in IC 041 due to the potential conflict with an earlier filed application initially cited by the prior examining attorney assigned to this application, and notwithstanding the prior submission of a coexistence agreement. Applicant now submits for consideration by this Examining Attorney a new coexistence agreement and the below discussion in support of its position that a likelihood of confusion with the prior filed application does not in fact exist.

The Examining Attorney found that the submitted consent agreement was a “naked consent” and is insufficient to overcome a likelihood of confusion refusal because it neither (1) sets forth reasons why the

parties believe there is no likelihood of confusion, nor (2) describes the arrangements undertaken by applicant to avoid confusing the public. In support of this position, the Examining Attorney cited *In re Mastic*, 829 F.2d 1114 (Fed. Cir. 1987). The Examining Attorney further suggests that if Applicant submits a consent agreement that (1) indicates consent to the use and registration of the mark, and (2) addresses one or both of the factors listed above, the refusal will be reconsidered.

Following the receipt of the latest Office Action – Suspension Notice, Applicant and Remedy Arts, LLC (“RA”) (the applicant in the cited earlier filed application) entered into a new coexistence agreement, which is attached hereto. In this new coexistence agreement, RA specifically agrees and consents to the use and registration of the Remedy Mark with the services listed in the agreement, and both of the factors listed by the Examining Attorney have been addressed. A true and accurate copy of the amended Mutual Trademark Coexistence and Consent Agreement executed by both parties is attached hereto as **Exhibit “A”** (the “Coexistence Agreement”).

Whereas RA initially sought a broad category of protection, in recognition of the actual marketplace realities, RA has agreed to amend its description to reflect its particular use of the mark. Specifically, though its services can be broadly described as “production of music and video” in reality, the services provided by RA have been and continue to be: “Production of music and video for *its* immersive media production known as Bella Gaia; production of a particular live immersive-art event depicting human civilization’s impact on the planet” [emphasis supplied](“Amended Services”).

As further discussed below, the Coexistence Agreement further acknowledges that RA’s services do not fall within the same trade channel as Applicant’s services, which are offered to third-party business clientele, and that Applicant has not historically and does not plan to offer such services.

***Connotation and Commercial Impression in relation to respective Services***

It’s well established that a likelihood of confusion analysis must consider the goods and services as identified in the subject registrations or applications. As stated in In Re Box Sols. Corp., 79 U.S.P.Q.2d 1953 (Trademark Tr. & App. Bd. 2006), in a 2(d) analysis “the meaning or connotation of a mark must be

determined in relation to the named goods or services.”

As such, an accurate analysis of the marks in question will be based on a comparison of Applicant’s mark and RA’s mark “Remedy Arts” in connection with “Production of music and video for *its* immersive media production known as Bella Gaia; production of a particular live immersive-art event depicting human civilization’s impact on the planet.” RA and Applicant have submitted an amendment to the Board for approval in connection with the pending opposition action filed by Applicant. A true and correct copy of the amendment as submitted in the Board proceeding is attached as **Exhibit “B”**.

Specifically, “Remedy,” as used by RF, suggests providing a remedy to businesses regarding their video-production needs or may generally provide the impression of being able to serve as the “remedy” for whatever the purchaser may be lacking in quality video-production. RA uses the word “Remedy” in connection with “Arts” gives a more limited meaning. Further, the words “Remedy” together with “Arts,” in connection with the Amended Services, i.e., in connection with Bella Gaia and “Bella Gaia; production of a particular live immersive-art event depicting human civilization’s impact on the planet” gives a very specific meaning and connotation to Remedy. Namely, it refers to the use of the arts as a remedy for the devastation of the planet. Accordingly, the connotation is a connection between the arts and its power to bring awareness to the much-needed global change for Earth’s ecosystem.

Thus, the Amended Services distinguish the services and trade channels, as well as the meaning, connotation and commercial impression. Standing alone, these differences are more than sufficient to cause a finding that no confusion is likely. In combination with the coexistence agreement discussed below and attached herewith, the factors are overwhelmingly in favor of permitting Applicant’s application to proceed.

#### ***Validity and Significance of Coexistence Agreement***

Applicant will address the factors of an acceptable coexistence agreement and how the the amended Coexistence Agreement submitted herewith addresses same, as follows:

(1) Sets forth reasons why the parties believe there is no likelihood of confusion.

- the Parties’ marks have coexisted in the marketplace without any known actual confusion

for approximately thirteen (13) years;

- The Parties acknowledge and agree that their services are provided through separate, non-overlapping trade channels and fields of use;
- RA does not offer or provide its production services to the general purchasing public but instead produces its own particular immersive-art event, which for years has been known as “Bella Gaia;”
- RF, on the contrary, provides its services in the fields of photography and video production to its third-party business clientele;

(2) Describes the arrangements undertaken by applicant to avoid confusing the public.

- the Parties agree to continue operating in the same trade channels and fields as they have been during said period of coexistence with no known actual confusion;
- RF agrees that it will not use the Remedy Mark or seek registration of the Remedy Mark for any of the Amended Services, specifically including the use of the Remedy Mark for photographic or video production of a live immersive-art event depicting human civilization’s impact on the planet.
- In the extremely unlikely event that confusion arises, RF and RA agree to work together in good faith to identify any changes in their marketing or business practices that would have given rise to this very unlikely confusion and to cease any activities that are shown to have led to this conclusion in the mind of a consumer. In this regard, the Parties agree upon an actual process, that is, to notify each other within 15 days of any such event of confusion and to work to identify and terminate any particular source of marketing or other activity within 30 days of such notification; thereafter the Parties agree to work in the spirit of cooperation to resolve the issue to mutual satisfaction. Before the matter will be considered resolved, the Parties agree that they will execute a writing specifically identifying the source and scope of confusion, the actions taken to resolve the issue, and

the resolutions regarding future avoidance of the issue.

The Examining Attorney further correctly points out that consent agreements are but one factor to be taken into account with all of the other relevant circumstance bearing on a likelihood of confusion determination, and lists five factors to be considered in weighing a consent agreement. Applicant respectfully requests that the Examining Attorney consider the following in weighing the significance of the Coexistence Agreement:

(1) Whether the consent shows an agreement between both parties. As set out above, the Coexistence Agreement reflects an agreement by RA to allow the registration of the Remedy Mark with all the services listed in the Coexistence Agreement. Those services are actually broader than the limited services listed in Applicant's instant application. Further, RA agrees to amend its services listed in the previously pending application as well the services that it will provide associated with the Remedy Arts Mark.

(2) Whether the agreement includes a clear indication that the goods and/or services travel in separate trade channels. The Coexistence Agreement reflects that the Remedy Arts Mark is being used only for a particular photographic or video production of a live immersive-art event depicting human civilization's impact on the planet, known as "Bella Gaia," while the Remedy Mark is being used for photography and video production for its third-party business clientele. Further, Applicant agrees that it will not use the Remedy Mark for the services associated with the Remedy Arts Mark.

(3) Whether the parties agree to restrict their fields of use. RA agrees that it will use the Remedy Arts Mark solely for the production of its own "Bella Gaia" show and for the production of live immersive-art events depicting human civilization's impact on the planet. Meanwhile, RF agrees not to use the Remedy Mark for any of the RA Amended Services listed in the Coexistence agreement.

(4) Whether the parties will make efforts to prevent confusion and cooperate and take steps to avoid any confusion that may arise in the future. The parties agree in the Coexistence as follows:

- To continue operating in the same trade channels and fields as they have been during said period of coexistence where there have been no known instances of actual confusion;

- RF agrees that it will not use the Remedy Mark or seek registration of the Remedy Mark for any of the Amended Services, specifically including the use of the Remedy Mark for photographic or video production of a live immersive-art event depicting human civilization’s impact on the planet; and
- In the extremely unlikely event that confusion arises, RF and RA agree to work together in good faith to identify any changes in their marketing or business practices that would have given rise to this very unlikely confusion and to cease any activities that are shown to have led to this conclusion in the mind of a consumer. In this regard, the Parties agree to notify each other within 15 days of any such event of confusion and to work to identify and terminate any particular source of marketing or other activity within 30 days of such notification; thereafter the Parties agree to work in the spirit of cooperation to resolve the issue to mutual satisfaction. Before the matter will be considered resolved, the Parties agree that they will execute a writing specifically identifying the source and scope of confusion, the actions taken to resolve the issue, and the resolutions regarding future avoidance of the issue

(5) Whether the marks have been used for a period of time without evidence of actual confusion.

As set out in the Coexistence Agreement, the parties acknowledge the fact the marks have coexisted for more than thirteen (13) years with no known actual confusion.

Finally, as to the Examining Attorney’s reliance upon *In re Mastic*, 829 F.2d 1114 (1987), Applicant respectfully submits that such reliance is misplaced. As recognized by the Trademark Trial & Appeal Board in In Re Wacker Neuson Se, 97 U.S.P.Q.2d 1408 (T.T.A.B. 2010), in *Mastic*, the agreement provided consent only to registration, not *use*, of the mark. Additionally, the applicant’s application in that matter was not based on use in the United States, and the consent referenced the parties’ marketing channels as a basis for their conclusion of no likelihood of confusion. The *Mastic* court noted that, “[i]f Mastic is making the argument that so long as it makes *no* use in the United States, no confusion will occur, such argument has no validity.” *In Re Mastic*, 829 F.2d at 1117. Further, in *Mastic*, the court noted that the “consent is conspicuously silent on

what are the underlying facts which led the parties to their conclusion of no likelihood of confusion.” *Id.* Unlike in *Mastic*, the record here is far from silent as to the arrangements between applicant and registrant and how that implicates possible confusion. As stated in *Mastic*:

One must look at all of the surrounding circumstances, as in *DuPont*, to determine if the consent reflects the reality of no likelihood of confusion in the marketplace, or if the parties struck a bargain that may be beneficial to their own interests, regardless of confusion of the public. For example, the parties may prefer the simplicity of a consent to the encumbrances of a valid trademark license.... **If the evidence of record establishes facts supporting an applicant's argument that the two uses can exist without confusion of the public, even a “naked” consent to registration is significant additional evidence in support of the applicant's position.**

*Id.* (emphasis added). In the application before the Examining Attorney, there is ample evidence presented that indicates that the agreed upon uses of the Remedy Arts Mark and Remedy Films Mark can exist without confusion of the public. As such, even if, *in arguendo*, the Coexistence Agreement is considered a naked consent, registration of both marks should be permitted.

Based upon the foregoing, Applicant submits to the Examining Attorney that there is in fact no likelihood of confusion with the prior filed application cited by Examining Attorney, and that a refusal to register Applicant’s mark under Section 2(d) is no longer necessary. Applicant thus respectfully requests that the Examining Attorney lift the suspension of this Application and approve the Application for publication.

#### **DECLARATION**

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in the application and this response are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

APPLICANT:  
REMEDY FILMS, LLC

By: Michael A. Penn  
Name: Michael A. Penn  
Title: Attorney for Applicant  
Date: December 4, 2020



# **EXHIBIT “A”**

## MUTUAL TRADEMARK COEXISTENCE AND CONSENT AGREEMENT

This **MUTUAL TRADEMARK COEXISTENCE AND CONSENT AGREEMENT** (“Agreement”), effective as of the date of execution (“Effective Date”), is made by and between Remedy Films, LLC, a Georgia limited liability company, with its principal place of business located at 554 W. Main Street, Building B, Suite 200, Buford, Georgia 30518 (“RF”) and Remedy Arts, LLC, a New York limited liability company, with its principal place of business located 229 W. 111<sup>th</sup> Street, #13, NY, NY 10026 (“RA”). RA and RF may be individually referred to herein as a “Party” or collectively as “Parties.”

**WHEREAS**, RF has used “Remedy” as service mark in the United States since at least as early as 2007 for marketing services and video-production-related services (the *Remedy Mark*) and owns U.S. Application Serial No. 88706851 filed November 26, 2019 (the “RF Application”) for the mark **REMEDY** for (i) “Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels; Development of marketing strategies, concepts and tactics, namely, audience development, brand awareness, customer relations, online community building and digital word of mouth communications; Providing advertising, marketing and promotional services, namely, development of advertising campaigns for television, print media and web pages; Video production services in the field of employment recruiting; Post-production editing services for video and audio commercials,” in International Class 35; (ii) “Photography; Photography services; Rental of video equipment; Rental services for audio and video equipment,” in International Class 041; and (iii) “Video production services; Charitable services, namely, providing facilities and equipment for video production; Film and video production,” in International Class 041 (the “RF Application”); and

**WHEREAS**, RA has used “Remedy Arts” in the United States since at least as early as 2008 in connection with the production of its immersive-art show titled “Bella Gaia” (the *Remedy Arts Mark*) and owns U.S. Application Serial No. 88418584 filed May 7, 2019 (the “RA Application”) for the mark **REMEDY ARTS** for “Production of music and video; production of live events, namely, live concerts and festivals” in International Class 041; and

**WHEREAS**, the Parties’ marks have coexisted in the marketplace without any known actual confusion for approximately thirteen (13) years; and

**WHEREAS**, The Parties acknowledge and agree that their services are provided through separate, non-overlapping trade channels and fields of use; and

**WHEREAS**, the Parties agree to continue operating in the same trade channels and fields as they have been during said period of coexistence;

**WHEREAS**, RA does not offer or provide its production services to the general purchasing public but instead produces its own particular immersive-art event, which for years has been known as “Bella Gaia;” and

**WHEREAS**, RF, on the contrary, provides its services in the fields of photography and video production to its third-party business clientele; and

**WHEREAS**, the Parties wish to set forth guidelines and ensure there is a process to adhere to such guidelines that would address the simultaneous use and registration of the Remedy Mark and the Remedy Arts Mark.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants set forth below, the parties hereby agree as follows:

1. RA agrees to amend the services listed in the RA Application to the following services: “Production of music and video for its immersive media production known as Bella Gaia; production of a particular live immersive-art event depicting human civilization’s impact on the planet” in IC 041 (the “Amended Services”).

2. Remedy agrees and consents to the use and registration with the USPTO of the RA Mark with the “Amended Services.” Further, Remedy agrees that it will not use the Remedy Mark or seek registration of the Remedy Mark for any of the Amended Services, specifically including the use of the Remedy Mark for photographic or video production of a live immersive-art event depicting human civilization’s impact on the planet.

3. RA agrees and consents to the use and registration with the USPTO of the Remedy Mark, U.S. Application Serial No. 88706851, and not to object to, oppose, or otherwise challenge, now or in the future or assist others in challenging RF’s use of or registration of the Remedy Mark in connection with the services in IC 041 listed above or its services, if any, in IC 035.

4. Upon the amendment of the services associated with the RA Mark in the RA Application, but contingent upon registration of Remedy Mark with the USPTO, RF agrees that it will not challenge now or in the future or assist others in challenging RA’s use of or registration of the Remedy Arts Mark in connection with the amended services above.

5. The Parties, after carefully examining the actual nature, use, and purpose of the services offered under the Remedy Mark and the services offered under the RA Mark (as agreed to be amended pursuant to this Agreement), agree that due to the differences between the marks, respective consumers, channels of trade and the actual use of the marks in the marketplace, the simultaneous use and registration of the Remedy Mark and the RA Mark is not likely to cause consumer confusion, mistake, or deception.

6. The Parties acknowledge and agree that the 13-year period of coexistence to date reflects the clear and inherent existing differences between their respective trade channels and fields of use. The Parties further agree that in light of the different commercial impression related to each party’s use of the word “Remedy” in context with its services, consumers encountering either brand will not suffer any source confusion or be likely to misattribute endorsement or sponsorship of each other’s services.

7. The Parties, after carefully examining the actual nature, use, and purpose of the services offered under the Remedy Mark and the services offered under the RA Mark (as agreed to be amended pursuant to this Agreement), the customers of the respective services, and the respective channels of trade, agree that the simultaneous use and registration of the Remedy Mark and the RA Mark are not likely to cause consumer confusion, mistake, or deception due to the differences between the marks, respective consumers, channels of trade and the actual use of the marks in the marketplace.

8. In the extremely unlikely event that confusion arises, RF and RA agree to work together in good faith to identify any changes in their marketing or business practices that would

have given rise to this very unlikely confusion and to cease any activities that are shown to have led to this conclusion in the mind of a consumer. In this regard, the Parties agree to notify each other within 15 days of any such event of confusion and to work to identify and terminate any particular source of marketing or other activity within 30 days of such notification; thereafter the Parties agree to work in the spirit of cooperation to resolve the issue to mutual satisfaction. Before the matter will be considered resolved, the Parties agree that they will execute a writing specifically identifying the source and scope of confusion, the actions taken to resolve the issue, and the resolutions regarding future avoidance of the issue.

9. This Agreement shall apply to use and registration of the Parties' respective marks in the United States and shall remain in force and effect for as long as both Parties, or their successors or assigns are using, or have a bona fide intent to use, their respective marks.

10. Any notices or communications to be given under or pursuant to this Agreement may be given either by personal delivery or nationally recognized carrier, such as UPS or FedEx, for overnight delivery to the address of the other Party set out below or to such other address as any such Party may have notified as being its address for service for the purpose of this Agreement:

RF: Michael A. Penn, Esq.  
Briskin, Cross & Sanford, LLC  
33 South Main Street, Suite 300  
Alpharetta, Georgia 30009  
(770) 410-1555  
(fax) (770) 410-3281  
mpenn@briskinlaw.com

RA: Laurence Singer, Esq.  
46-60 156<sup>th</sup> Street  
Flushing, New York 11355  
[phone]  
[fax]  
ls@laurencesinger.com

11. Neither the execution of this Agreement, nor the carrying out of any obligation under this Agreement, shall act or serve as an admission of any liability by either Party.

12. This Agreement shall both benefit and be binding upon the Parties and their respective officers, shareholders, directors, agents, affiliates, parents, subsidiaries, related companies, licensees, successors, and assigns.

13. This Agreement is the entire agreement between the Parties with respect to the subject matter contained within and shall not be amended except in a written agreement signed by an authorized representative of each Party. In the event that any portion of this Agreement is declared invalid or unenforceable for any reason, such portion is deemed severable herefrom, and the remainder of this Agreement will be deemed and remain fully valid and enforceable unless such invalidity or unenforceability tends to substantially deprive any party of the benefits provided to it by this Agreement, then the Parties will work to negotiate a substitute provision to replace the invalid or unenforceable provision consistent with then-current law and the parties' original intent. If the Parties are unable to agree upon a substitute provision, the deprived party will have the

option of keeping this Agreement in effect or terminating it.

14. The Parties hereto acknowledge and agree that they have been represented and advised throughout all of the negotiations by counsel and that in entering into this Agreement, the Parties are not relying on any representations or statements of the other Party or their counsel, except for those expressly stated in this Agreement. Each Party will bear its own costs in connection with negotiating and entering into this Agreement and for all actions to be taken by it as set forth herein.

15. This Agreement may be executed in any number of counterparts with the same effect as if the signatures were upon the same instrument. The receipt and exchange of such counterparts by fax or portable document format (.pdf) will be considered sufficient for the purposes of execution hereunder, and such counterparts taken together shall constitute one Agreement. Execution of a faxed or .pdf copy will have the same force and effect as execution of an original, and a .pdf or faxed signature will be deemed an original and valid signature. Each individual executing this Agreement on behalf of any Party represents and warrants that he or she has the right, power, and authority to execute this Agreement on behalf of; and to bind, such Party, without the need of further approval or consent of any kind.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

17. This Agreement is entered into in part with the intent of the Parties that it will permit the registration of the Remedy Mark with the U.S. Patent & Trademark Office in International Class 041. In the event that the USPTO nonetheless refuses to register the Remedy Mark notwithstanding this Agreement, then in such event this Agreement shall be deemed null and void.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement by their officers thereunto duly authorized as of the Effective Date above.

**REMEDY FILMS, LLC**

By:  \_\_\_\_\_

Printed Name: Corey James Graff

Its: Owner

Dated: 9/15/2020

**REMEDY ARTS, LLC**

By:  \_\_\_\_\_

Printed Name: Kenji Williams

Its: Owner, President

Dated: 9/30/2020

# **EXHIBIT “B”**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REMEDY FILMS, LLC,

Opposer,

v.

REMEDY ARTS, LLC,

Applicant.

IN RE: Serial No. 88418584

REMEDY ARTS

Opposition No. 91254835

**JOINT MOTION TO RESUME PROCEEDINGS  
TO AMEND SUBJECT APPLICATION**

COME NOW OPPOSER REMEDY FILMS, LLC and APPLICANT REMEDY ARTS, LLC, pursuant to TBMP 510.03 and 514.02, and hereby move to resume proceedings in the above-styled case so that the Board may consider the consented to amendment to the identification of the services in the subject application, “Remedy Arts” (Serial No. 88418584).

In substance, the proposed amendment clarifies the nature and extent of the original description, as follows:

- ~~Production of music and video; production of live events, namely, live concerts and festivals. [original]~~
- Production of music and video for its immersive media production known as Bella Gaia; production of a particular live immersive-art event depicting human civilization’s impact on the planet. [proposed amended]

Pursuant to 37 C.F.R. § 2.133, all amendments during the pendency of an opposition are subject to review by the Board. Opposer and Applicant jointly consent and move for the

amendment should it conform with the statutory requirements and USPTO general rules for acceptability.

Upon the acceptance of the amendment by the Board, Opposer and Applicant respectfully request that these proceedings once again be suspended in order for the parties to finalize their negotiating for a likely settlement of this opposition action. The Parties respectfully request that the proceedings be suspended until March 31, 2021.

This 25<sup>th</sup> day of November, 2020.

BRISKIN, CROSS & SANFORD, LLC

By: /Michael A. Penn/  
Michael A. Penn  
Georgia Bar No. 571325  
Attorneys for Opposer

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/Laurence Singer/  
Laurence Singer  
District of Columbia Bar No. 12252  
Attorneys for Applicant

46-60 156th Street  
Flushing NY, 11355  
646-327-8772  
[ls@laurencesinger.com](mailto:ls@laurencesinger.com)



### **CERTIFICATE OF FILING**

The undersigned affirms that the foregoing JOINT MOTION TO RESUME PROCEEDINGS TO AMEND SUBJECT APPLICATION was filed with the Trademark Trial and Appeal Board via the ESTTA electronic filing system on the date below:

Dated: 11/25/2020

/Michael A. Penn/  
Michael A. Penn

### **CERTIFICATE OF SERVICE**

The undersigned affirms that the foregoing JOINT MOTION TO RESUME PROCEEDINGS TO AMEND SUBJECT APPLICATION was served by email and by mailing a copy by first class mail, postage prepaid, to Applicant's Correspondence Address of Record and Applicant's attorney of record:

LAURENCE SINGER  
46-60 156TH STREET  
FLUSHING NY, 11355  
[ls@laurencesinger.com](mailto:ls@laurencesinger.com)

Dated: 11/25/2020

/Michael A. Penn/  
Michael A. Penn  
Georgia Bar No. 571325  
Attorneys for Opposer

BRISKIN, CROSS & SANFORD, LLC  
33 South Main Street  
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