

ADVERTISING SELF-REGULATION CODE FEDERACION ESPAÑOLA DE BEBIDAS ESPIRITUOSAS

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PREAMBLE

Whereas the Federación Española de Bebidas Espirituosas "FEBE – Licoristas de España", brings together over 120 companies in Spain producing and distributing spirit drinks and derived products, which presupposes the representativeness of practically all the sector;

Whereas the production of spirit drinks is an important sector of the Spanish food industry;

Whereas production and consumption of spirit drinks are firmly rooted economically and socially in Western culture and in Mediterranean and Spanish culture, making it inseparably associated with leisure, habits and lifestyle, with a major impact in the Catering and Tourism sector;

Whereas in Mediterranean countries spirit drinks form part of a culture, in which consumption is lawful and is connected with habits and lifestyle;

Whereas one of the main missions of FEBE is to promote the active social responsibility of the sector, contributing in cooperation with the authorities and society as a whole towards action to combat abusive consumption of alcoholic beverages, to prevent their consumption in groups or situations where there is a risk (minors, drivers, pregnant women, etc.) and to promote responsibility, moderation and good sense in the consumption of alcoholic beverages for the rest of the population;

Whereas experience of the total prohibition of advertising of spirit drinks has demonstrated its absolute inefficacy and lack of results in preventing problems deriving from their abuse and alcoholism;

Whereas, on the contrary, information campaigns and education in a social context constitute the most effective means of raising citizens' awareness of these problems and that to this end advertising is especially useful as a vehicle for sending out messages aimed at encouraging moderate and responsible consumption.;

Whereas in our market economy system advertising is an essential element in the configuration of free competition, both for introducing new products and for expansion and securing customer loyalty for existing products, together with consideration for the legitimate economic interests of consumers and, in particular, their right to information and freedom of choice;

Whereas, in a manner consistent with the case law of the European Court of Human Rights, advertising is included within the scope of freedom of expression;

Whereas a self-regulation code for advertising must establish a set of principles and rules of a deontological nature which, always in compliance with the legislation in force in this field, define the meaning and scope of the applicable laws and specify the conduct, practices and strategies which, in the light of the said laws, are considered objectively to conform or not to conform with the requirements of good faith and good business practices;

Whereas the self-regulation systems in the field of advertising and commercial communications are enjoying considerable and growing recognition, by both the Community institutions and the national legislator, and are encouraging and driving the preparation of codes of conduct by all the parties concerned;

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Whereas the Council Regulation of 5 June 2001 (2001/458/EC)¹ expresses the need for the Member States, in accordance with the different legal, normative or self-regulatory contexts, to promote in cooperation with producers and distributors of alcoholic beverages and relevant non-governmental organisations the establishment of effective self-regulating mechanisms in the fields of the promotion, marketing and distribution of alcoholic beverages, independently of the means used, within the framework of codes of conduct;

Considering *Directive 2005/29 of 11 May concerning unfair business-to-consumer commercial practices* following the publication by the European Commission of the Green Paper on Consumer Protection in autumn 2001 and the work developed subsequently on this subject, in which self-regulation is called upon to play an extremely relevant role;

Whereas the European Parliament in its resolution on the Green Paper on Commercial Communications and the European Commission's Directorate-General for Health and Consumer Protection have encouraged the industry to introduce minimum principles for consumer protection, to step up self-regulation [in complaints procedures] and to prepare codes of conduct;

Whereas the members of the Federación Española de Bebidas Espirituosas intend at all times to ensure that their advertising is in keeping with the legislation in force, together with the requirements of good will and good business practices;

Whereas the Federación Española de Bebidas Espirituosas, fully aware of the importance of self-regulation in advertising, the principles of which it fully shares, and taking into account the specific characteristics of the spirit drinks sector derived from the strict legislation to which it is subject, produced its own Advertising Self-Regulation Code in 1999;

Whereas FEBE and its member companies, considering the application of and compliance with the Advertising Self-Regulation Code to have been a positive experience, wish to update it in order to reaffirm its permanent commitment to social responsibility towards consumers and society, strengthening and intensifying the promotion of responsible advertising of spirit drinks;

The General Assembly of the de la Federación Española de Bebidas Espirituosas, meeting in Madrid on 13 March 2013, decided to revise and update its Advertising Self-Regulation Code, created in 1999 and revised in 2006 and 2008, approving the following Deontological Code.

¹ “Without prejudice to any national legislation or measures, producers and retailers should be urged to establish or enforce self-regulatory controls over, and to agree on standards for, all forms of promotion, marketing and retailing of alcoholic beverages, irrespective of the medium used, in the framework of codes of conduct.”
“Self-regulation of advertising for alcoholic beverages, which has the support of the relevant interested parties, such as producers, advertisers and media and which is already working in a number of Member States, often in close cooperation with governments and non-governmental organisations, can play an important role with regard to the protection of children and adolescents from alcohol related-harm.”

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1. OBJECT

The purpose of this Code is to set out the deontological principles and rules to be observed in the advertising of drinks to which this Code applies, including advertising messages that are the responsibility of FEBE members, to the benefit of the market, consumers and the general interest, always in compliance with the legislation applicable in this matter and without prejudice to the obligations deriving from the Advertising Self-Regulation Code of Conduct, the Code of Advertising Practice of the International Chamber of Commerce and whatsoever other deontological obligations assumed individually or collectively.

ARTICLE 2. DEFINITIONS

For the purposes of the interpretation of this Code, the following definitions are to be borne in mind:

- (1) *Advertising*: Any form of communication made by a natural or legal person, public or private, in pursuit of a commercial, industrial, craft or professional activity with the objective of directly or indirectly promoting contracting for movable or immovable property, services, rights and obligations, and encouraging responsible consumption (hereinafter called "Responsible Consumption Advertising"). In this way, shall be interpreted as Responsible Consumption Advertising all communication actions within the meaning of the previous paragraph, in any way or form or using any medium, aimed at making the consumer aware of the problems deriving from combining alcohol consumption with risk situations, at preventing abusive consumption of alcohol and/or at encouraging responsibility in such consumption.

Not be regarded as advertising is the appearance of any of the beverages to which this Code applies, their containers or their brands in the format, scenery, script or set of any programme or work produced for radio or television when this occurs incidentally or by way of information. Such appearances shall not be regarded as incidental or informative if the medium receives any direct or indirect consideration from any FEBE member company.

Not be regarded as advertising is the appearance of any of the beverages to which this Code applies or its brands, in written or digital publications in the case of an individual initiative of that publication and occurs occasionally or for information purposes and there is not any direct or indirect financial compensation for the medium by any FEBE member company.

- (2) *Media*: The social communication means used for the dissemination of advertising.
- (3) *FEBE*. Federación Española de Bebidas Espirituosas.
- (4) *Alcoholic beverages*: Those beverages with an alcoholic strength of over 1.2% vol.
- (5) *FEBE Responsible Consumption Message*: "Drink in moderation. It's your responsibility" and/or any other responsible consumption message approved by the FEBE General Assembly to substitute or supplement the above.

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- (6) *Autocontrol*. The "Asociación para la Autorregulación de la Comunicación Comercial", or any organisation replacing it in the future.

- (7) Direct interaction: is the two way communication between the consumer and the brand through a web site controlled by the brand. This occurs when the user interacts with the brand as a response to direct communication from the advertiser.

- (8) Age affirmation: is the process or mechanisms by which consumers provide full date of birth (day, month and year) to affirm they are of legal age required to purchase the product. The age affirmation could be done through different mechanisms, a compulsory pass button, an email or an instant message confirming the legal age and the access after being registered.

- (9) User-generated content on a web page or on a social network site, created by the brand advertiser: These materials are generated by the users (texts, photos, audio or videos) to be shared. To ensure that the user generated materials are on line with the general principles of this Code, the brand owner should include a specific message specifying that inappropriate contents will be removed and additionally regular monitoring will be carried out, in case they are seen to be inappropriate.

- (10) Forwardable content: Is any digital brand content placed on a site which is designed or enabled to be shared or download. Such digital content must include a warning that these materials are not aimed at individuals below 18 years old.

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ARTICLE 3. SCOPE

1. Objective scope

This Code shall apply to the advertising of spirit drinks and beverages based on spirits and/or which fall within the objective scope of the Tax on Alcohol and Derived Beverages, produced, marketed or imported by FEBE member companies. In all cases shall be excluded beer, cider and the products of the wine sector as defined in Regulations (EC) 1493/99 and (EC) 1601/91 or any legislation replacing them in the future,

In so far as Responsible Consumption Advertising is concerned, this Code shall apply whenever the said Advertising comes from FEBE or any FEBE member company.

2. Subjective scope

This Code shall apply to all FEBE member companies, regardless of where they have their domicile or main establishment, which produce, market or import the beverages to which this Code applies.

3. Territorial scope

This Code shall apply to advertising published, distributed or broadcast on or for Spanish territory.

CHAPTER II. GENERAL DEONTOLOGICAL PRINCIPLES

ARTICLE 4. LEGALITY PRINCIPLE

The advertising of beverages to which this Code applies shall comply with the legislation in force, whatever its content, the dissemination medium or the form that it takes.

ARTICLE 5. FAIRNESS PRINCIPLE

The advertising of beverages to which this Code applies shall meet the requirements of good faith and good business practices, whatever their content, the dissemination medium or the form that they take

ARTICLE 6. VERACITY PRINCIPLE

6.1. The advertising to which this Code applies shall be truthful and identifiable as advertising.

6.2. The advertising to which this Code applies shall avoid any error as to the alcoholic strength of the beverage advertised. To this effect, advertising that is visually perceptible shall inform consumers in a clearly legible format of the alcoholic strength of the beverage advertised in accordance with the conditions set out in Article 7.

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ARTICLE 7. SOCIAL RESPONSIBILITY PRINCIPLE

7.1. The advertising to which this Code applies, both in its content and in its form and dissemination, shall be effected with a sense of social responsibility.

7.2. The advertising to which this Code applies shall not encourage abusive consumption. To this effect, advertising which is visually perceptible shall include the Responsible Consumption Message indicating that moderation is a basic premise for responsible consumption. The said message shall be common to all FEBE member companies and shall be displayed to consumers in a clearly legible format. To this end, the FEBE Responsible Consumption message:

- a) Must be affixed in a clearly visible place.
- b) Must have a minimum size equivalent to 1% of the total area of the advertisement; when it is a question of advertising in cinemas or on television, it must have a minimum size of 1.5% of the total area of the advertisement and must be displayed for at least 2 seconds.
- c) Must be printed in a colour which allows it to be clearly visible and legible against the background of the advertisement.
- d) Must be accompanied by an indication of the alcoholic strength of the product, in the same format and colour and immediately following the said message.

7.3. Additionally and voluntarily, FEBE member companies may include in their promotional material the FEBE Responsible Consumption Message or any other moderation message, in accordance with the parameters established in Article 13 below.

7.4 The FEBE General Assembly may complete and/or modify the parameters relating to the FEBE Responsible Consumption Message indicated in subparagraph 7.2 above.

CHAPTER III. DEONTOLOGICAL PRINCIPLES RELATING TO ADVERTISING CONTENT

ARTICLE 8. REFERENCES TO CONSUMPTION

The advertising to which this Code applies:

- a) may highlight the pleasure of communication, conviviality or socialising associated with responsible consumption, but may never suggest that non-consumption is synonymous with immaturity, failure in social or working life or in business or that non-consumers are less accepted or are less successful than consumers;
- b) may not reflect situations of sexual success or suggest that consumption may contribute towards professional success, may enhance sexual attractiveness or may help to overcome shyness;

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- c) may not show situations inferring that consumption contributes towards reducing or eliminating problems of social maladjustment, anxiety or internal conflicts and, in general, may never suggest that consumption in solitude helps to solve this type of problem;
- d) may not show situations in which it may be inferred that consumption improves physical or mental efficiency;
- e) may not attribute to beverages the possibility of preventing, treating or curing diseases or indicate that they have therapeutic properties, and may not be specifically aimed at persons undergoing medical treatment;
- f) may not show or be specifically aimed at pregnant women;
- g) may not show images of women of a discriminatory or degrading nature or stereotypical female images that may encourage violence;
- h) may not present situations of abusive consumption;
- i) may not present a high alcoholic strength as a positive quality or allow it to be inferred that a low alcoholic strength justifies immoderate use;
- j) may not show abstinence or moderate consumption in a negative light;
- k) may not associate drinks with situations of violence, aggression, danger or antisocial behaviour;
- l) may not associate consumption with carrying out a job which involves responsibility for third persons or a high-risk activity, or suggest that it has a positive effect on performance.

CHAPTER IV. DEONTOLOGICAL PRINCIPLES RELATING TO THE SAFEGUARDING OF GENERAL INTERESTS

ARTICLE 9. ROAD SAFETY

9.1 The advertising to which this Code applies may not suggest that a minimal amount of alcohol can be consumed without a risk to driving and road safety. Nor may it show situations which associate alcohol consumption with driving vehicles or allow the appearance in the content of the advertising message, in a primary and not merely secondary manner, of vehicles or elements directly linked with driving, regardless of whether or not this is in a driving situation, except for cases of responsible consumption campaigns.

9.2. The advertising to which this Code applies may not be inserted in motor magazines or other publications or in specialised supplements or sections of magazines or other publications whose main content is motor vehicles.

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ARTICLE 10. MINORS

10.1. The advertising to which this Code applies may not be specifically aimed at minors.

10.2 Minors may not play a part in or figure in advertising to which this Code applies.

10.3 The models in advertising to which this Code applies must not be under 23 years of age.

10.4. The advertising to which this Code applies and the presentation of beverages included in its objective scope may not use images, drawings, icons, fictional persons or persons of public renown directly or fundamentally connected with minors.

10.5. With a view to reducing the impact of the advertising to which this Code applies on minors:

a) the said advertising may not be broadcast on television or radio or shown in cinemas during, immediately before or immediately after programmes or sessions specifically intended for minors or the majority of the audience for which are minors;

b) the said advertising may not be broadcast on television until the beginning of the news in the evening/night and in no case before 20:30;

c) the said advertising may not be inserted in publications aimed at minors or on pages for minors in publications not specifically intended for them;

d) when the said advertising is direct and, in particular, when it is a question of sending out leaflets, graphic advertising and other advertising media by any means to a particular consumer or predetermined consumers, in this case it must be sent to adults and, to this effect, its external presentation shall indicate the name of the adult to whom it is addressed and its internal content shall include the words "Not suitable for minors" or similar, clearly establishing that the said advertising is in no case intended for minors.

6.The advertising to which this code applies, in both the printed press and broadcast media, shall only be shown during the hours, programmes or sections of the said media output, when at least 70% of the audience are reasonably expected to be adults of 18 years or older.

CHAPTER V. DEONTOLOGICAL PRINCIPLES RELATING TO SPECIFIC FORMS OF ADVERTISING

ARTICLE 11. CORPORATE ADVERTISING

1.- Corporate advertising by companies manufacturing, importing or marketing beverages to which this Code applies is legal whenever it sets out to attain a certain and reasonable objective within the company's corporate communications plan.

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2.- Nevertheless, corporate advertising may not be used as indirect advertising of particular beverages or brands whose advertising is prohibited in the medium through which it is disseminated.

In order to prevent any supposition of illegal indirect advertising within the meaning of the previous paragraph, corporate advertising shall at least fulfil the following conditions:

- i) no corporate name, business name or other distinctive sign substantially identical to a brand whose advertising is prohibited in the medium through which it is intended to disseminate advertising may be used except in the hypotheses considered in this Article;
- (ii) the complete corporate name or business name of the advertiser must be given;
- (iii) the design of the advertising message must not evoke a beverage or brand, even without its being expressly mentioned, the advertising of which is prohibited through the medium in which it is intended to disseminate the advertising, using all necessary means to ensure that the consumer perceives without any confusion that it is not a question of advertising a beverage or brand prohibited in the medium through which it is intended to disseminate the said advertising;
- (iv) it may not immediately precede or follow or coincide in time with advertising campaigns for brands or beverages leading to the recipient's possibly establishing a direct link between them.

3.- In particular, it shall be legal to use corporate advertising which, complying with the above-mentioned criteria, is carried out on the occasion of events of relevance to the legal-business life of the company which reasonably justifies its use, such as a stock exchange flotation or a share or bond issue.

ARTICLE 12. BRAND EXTENSION ADVERTISING

12.1. The use of a brand of one of the beverages to which this Code applies to designate another product, alcoholic or otherwise, or a service is the right of a company established by legal edict.

12.2. Nevertheless, advertising a product identified through a brand identical or similar to one of the beverages to which this Code applies must not be used as a form of indirect advertising of the said beverage in media in which its advertising is prohibited.

In order to prevent any supposition of illicit indirect advertising within the meaning of the previous paragraph, brand extension advertising for the products to which this Code applies shall fulfil the following conditions at least:

- a) it must correspond to a real and reasonable intention to place the new product on the market;
- b) once the product has been launched on the market, for its advertising to continue it must be possible to demonstrate that an average weighted distribution is being made, detectable on an independent index confirming its continued marketing;

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- c) it must clearly identify the product that is the subject of the advertising, so that the consumer is aware of its nature, using all necessary means to ensure that the consumer perceives without any confusion that it is advertising for a product different from that whose advertising is prohibited in the medium in which it is intended to disseminate it;
- d) the advertising must not use common slogans, images or motifs that can be associated by the consumer with previous, simultaneous or subsequent campaigns relating to the beverage whose advertising is prohibited in the medium in which its intended to disseminate it.

ARTICLE 13. RESPONSIBLE CONSUMPTION ADVERTISING

13.1. FEBE member companies and the beverages to which this Code applies which they produce or market may use advertising messages within their own Responsible Consumption Advertising ("Responsibility Advertising Message"). However, there must be no risk of confusion in consumers' minds which may lead them to think that the said Responsibility Advertising Message is a sectoral message.

13.2 In view of the above, any FEBE member company intending to carry out Responsible Consumption Advertising must in all cases ensure that there is sufficient differentiation between on the one hand its Responsibility Advertising Message and on the other hand the FEBE Responsible Consumption Message, which means that the text of its Responsibility Advertising Message:

- a) must always be clearly linked to the brand or business name of the member company that uses it;
- b) must never be similar or sufficiently like the FEBE Responsible Consumption Message or use the same terms, even though structured differently, or the same typography;
- c) must always be larger than the FEBE Responsible Consumption Message and must appear in a clearly differentiated place where it can never be confused with the FEBE Responsible Consumption Message.

13.3 The Responsibility Advertising Message must not:

- a) make responsible use of the beverages to which this Code applies appear commonplace or trivial, evoke fear or negative feelings or denigrate or have a negative impact on the image of FEBE or any of its members;
- b) mislead;
- c) be associated with any content or conduct not permitted by this Code;
- d) be used for direct or indirect advertising for products or companies associated with FEBE, including advertising in those media in which the advertising of alcoholic beverages is not permitted, or be used in any other way to evade legal or self-regulation prohibitions in force as regards the advertising of the beverages covered by this Code.

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ARTICLE 14. SPONSORSHIP

14.1 Sponsorship is that activity whereby a natural or legal person, called the sponsor, contributes towards the financing of any kind of social, cultural or sports event or a spot in communication media to the benefit of another natural or legal person, called the sponsored, with the objective of promoting the name, brand, image, activities or relations of the sponsor.

Simply contracting for static advertising at events does not constitute sponsorship, which in any case must comply with the legislation applicable in this field.

14.2. Sponsorship, and especially sponsorship of radio and television programmes, shall comply with the applicable legislation concerning the advertising of alcoholic beverages.

In so far as the beverages to which this code applies are concerned, FEBE member companies may not:

- a) sponsor events specifically aimed at or minors or in which minors mostly participate;
- b) sponsor events which are broadcast on television when the main objective of the said sponsorship is promotion through the medium of television of any alcoholic beverage whose advertising is prohibited in this medium.

Promotion through the medium of television is considered to exist when there is a consideration for the medium on the part of the member company, whether directly or through the organiser of the event or any other intermediary. Nevertheless, it is to be understood that promotion through the medium of television does not exist when the event is of informational interest in itself or forms part of sports competitions, cultural or social programmes, courses or series and any other acts provided that they are of an official nature.

ARTICLE 15. ADVERTISING ON THE INTERNET

15.1 Advertising on the Internet and the websites of FEBE member companies and/or those of their brands of alcoholic beverages to which this Code applies, both on national sites or international sites intended for the Spanish public (henceforth called "websites") is governed by the provisions of this Code.

15.2 The websites of FEBE member companies and/or those of their brands of alcoholic beverages to which this Code applies must show, on the first page of the section of the website where alcoholic beverages to which this Code applies are displayed or promoted:

- (a) the FEBE Responsible Consumption Message, in accordance with Article 7 above.

In the case of international websites intended for the Spanish public, the obligations laid down in this subparagraph shall be deemed to be fulfilled when a message is introduced similar to the FEBE Responsible Consumption Message, in a language easily understandable to Spanish users and meeting all the obligations that are mentioned.

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- (b) For access thereto, a warning and a compulsory pass button which differentiates between adult users and non-adults and which the user must click in order to continue viewing the website, provided that he or she is an adult.

The said button must appear in an immediately visible position as soon as the website opens and be of a size and colour making it clearly visible. If the user is not an adult, when the corresponding button is clicked the system sends the user back to the home page, refusing further access to minors.

- (c) Likewise, when there are questionnaires on websites for any kind of survey or for participation in promotions applicable to Spanish territory, they must include a request for the complete date of birth (day, month and year) and the system must refuse access to the data process to minors, sending the user back to the home page of the website.

15.3. Digital publicity on web site controlled by the advertiser or on social network should have a compulsory pass button for age confirmation were they interact directly with the user. The user should click in order to continue viewing the provided contents, the user should be at least 18 years old or above. If this is not the case, access should be blocked.

15.4. Without prejudice to the responsibilities due to the current legislation, digital publicities created with the aim of reposting content, should clearly specify that are not aimed to underage people and can't be forwardable to them.

CHAPTER VI. APPLICATION OF THE CODE

ARTICLE 16. LINKING UP TO THE CODE

FEBE member companies undertake to observe in their advertising the principles set out in this Deontological Code.

ARTICLE 17. MONITORING COMPLIANCE WITH THE CODE

17.1. The monitoring of compliance with this Code lies first of all with the Jurado de Autocontrol. To this effect, FEBE member companies undertake to lodge any complaints against the advertising of other member companies with the Jurado de Autocontrol in the first instance, prior to recourse to the Courts, and immediately to observe and comply with any resolutions issued by the Jurado de Autocontrol in relation to the Code, discontinuing the advertising or making the necessary modifications.

As well as FEBE member companies, complaints may also be lodged by FEBE itself with the Jurado de Autocontrol concerning failure to comply with the principles of this Code, either of its own accord or on a request by a member company or an individual, such as a consumer.

1. For the effective application of this Code and the processing and resolution of any complaints made against the advertising of FEBE member companies, the Jurado de Autocontrol will follow the provisions of its Regulation.

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3. FEBE reserves the right granted to it in its Statutes to expel any of its members who continue to carry out advertising that has been declared contrary to the legislation in force concerning the advertising of the beverages to which this Code applies or to the deontological principles contained in this Code by the Jurado de Autocontrol or by a Court.

Likewise, FEBE reserves the right to have recourse to the Courts should any of its members fail to comply with a resolution issued by the Jurado de Autocontrol relating to an offence against the legislation in force concerning the advertising of the beverages to which this Code applies.

SINGLE FINAL PROVISION. ENTRY INTO FORCE OF THE CODE

This Code shall come into effect for all advertising contracted for or disseminated (whatever the medium or the form of dissemination) as from 13 of March of 2013, the moment when was communicated to the members.

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